

EXHIBIT 1

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Arbitration Proceedings ~ Volume I ~ February 9, 2015

Marc J. Randazza vs. Excelsior Media Corporation

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1 ARBITRATION BEFORE
2 JUDICIAL ARBITRATION AND MEDIATION SERVICE
3
4 MARC J. RANDAZZA,)
5 Complainant,)
6 vs.) Ref. No. 1260002283
7 EXCELSIOR MEDIA)
8 CORPORATION, a Nevada)
9 corporation; LIBERTY)
10 MEDIA HOLDINGS, LLC, a)
11 California limited)
12 liability company; and)
13 JASON GIBSON,)
14 individually,)
15 Respondents.)
16 _____)

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COPY**

17
18 TRANSCRIPT OF ARBITRATION PROCEEDINGS
19 VOLUME I
20 BEFORE THE HONORABLE STEPHEN E. HABERFELD
21 Taken on Monday, February 9, 2015
22 At 3800 Howard Hughes Parkway
23 Eleventh Floor
24 Las Vegas, Nevada
25
26 REPORTED BY: JO A. SCOTT, RPR, CCR NO. 669

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1 APPEARANCES:

2 For the Complainant:

3 KENNETH P. WHITE, ESQ.
HENRY L. WHITEHEAD, ESQ.
4 Brown White & Newhouse
333 South Hope Street
5 40th Floor
Los Angeles, California 90071
6 (213) 613-0500

7 For the Respondents:

8 WENDY MEDURA KRINCEK, ESQ.
ETHAN THOMAS, ESQ.
9 Littler Mendelson
3960 Howard Hughes Parkway
10 Suite 300
Las Vegas, Nevada 89169
11 (702) 862-8800

12 Also Present:

13 MARC J. RANDAZZA
JASON GIBSON
14 BRIAN LOWDERMAN
BRIAN DUNLAP
15
16

17 I N D E X

18 WITNESS PAGE

19 MARC J. RANDAZZA
Direct Examination by Mr. White 13
20
21
22
23
24
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1 LAS VEGAS, NEVADA; MONDAY, FEBRUARY 9, 2015

2 9:10 A.M.

3 -oOo-

4

5 ARBITRATOR HABERFELD: On the record.

6 Good morning, all. We're here in the

7 first of five scheduled evidentiary sessions of

8 the arbitration hearing in the matter of Marc J.

9 Randazza, Complainant, and Excelsior Media

10 Corporation, et al., Respondents. JAMS Reference

11 Number 1260002283.

12 We have had an off-the-record discussion

13 of a number of subjects, which I will try to

14 remember and will ask the assistance of counsel,

15 who I would, I guess, ask first to make your

16 appearances.

17 MR. WHITE: Your Honor, Kenneth White,

18 Brown White & Newhouse for Complainant,

19 Mr. Randazza.

20 MR. WHITEHEAD: Your Honor, Henry

21 Whitehead, also Brown White & Newhouse, also for

22 Mr. Randazza.

23 ARBITRATOR HABERFELD: Okay.

24 MS. KRINCEK: Wendy Krincek for Littler

25 Mendelson on behalf of the Respondent.

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1 MR. THOMAS: Ethan Thomas from Littler

2 Mendelson on behalf of the Respondent.

3 ARBITRATOR HABERFELD: Any other

4 appearances today?

5 MS. KRINCEK: For the record, our company

6 representatives for Respondent are Jason Gibson,

7 Brian Lowderman, and Brian Dunlap.

8 ARBITRATOR HABERFELD: We may get to an

9 issue of that. I think I'm seeing --

10 MR. WHITE: And Mr. Randazza is also

11 present.

12 ARBITRATOR HABERFELD: Is there an issue

13 about the presence of representatives of the

14 company during the examination of any witnesses,

15 or that's not a problem?

16 MR. WHITE: I believe that under the JAMS

17 rules, it's permitted. I'll leave it to your

18 discretion, Your Honor, to consider when I

19 cross-examine, the fact that they've been here for

20 other proceedings.

21 ARBITRATOR HABERFELD: Since it appears

22 we have three representatives, I think we can

23 narrow it down to one if it becomes an issue.

24 But they are entitled to have a

25 representative?

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1 MR. WHITE: Yes, sir.

2 ARBITRATOR HABERFELD: As is indicated
3 when I said "on the record," we have a court
4 reporter present taking everything down, I
5 believe, as we are proceeding now and through the
6 conclusion of the evidentiary sessions of the
7 arbitration hearing.

8 And it is my understanding off the
9 record, and you will now confirm on the record,
10 that it has been stipulated by both sides that
11 this matter may be stenographically, electrically
12 recorded as applicable by our court reporter, and
13 that the transcript, which will be prepared by her
14 of these evidentiary sessions, will become the
15 official record of the arbitration hearing; is
16 that so stipulated?

17 MS. KRINCEK: We agree, Your Honor.

18 MR. WHITE: So stipulated.

19 ARBITRATOR HABERFELD: We also had a
20 conversation about what, if any, evidentiary rules
21 apply beyond the JAMS employment arbitration
22 rules. And after checking and colloquy, it has
23 been stipulated and is so ordered that the
24 evidentiary rulings by the chair will be guided
25 solely by the arbitrator's discretion under the

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1 JAMS employment arbitration rules, which in this
2 arbitration will be a more relaxed set of rules.
3 And we had a conversation about how, with respect
4 to documentary evidence and testimonial evidence,
5 that will work. And I'm not going to go into a
6 long conversation now, except to, as briefly as I
7 can, just reference that off the record
8 conversation, and hope that it doesn't require
9 extensive regurgitation on the record.

10 But basically anything that has been
11 premarked and exchanged in the deposition volumes,
12 copies of which have been provided to the
13 arbitrator, are received in evidence subject to
14 specific objection which need not be made at this
15 time; however, timely objection should be made
16 should either side have any serious objection to
17 the documentation of marked and presented by the
18 other side, and, as I say, received in evidence,
19 that evidence is in until it is out, subject to
20 objection, as I've noted.

21 And that I have further noted that it is
22 very likely that I will overrule objections,
23 unless in the kind of category going to the bona
24 findings, whether it is a manufactured or altered
25 document, that would be the kind of objection that

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1 I might be more inclined to sustain. But,
2 otherwise, objections are not prohibited, but will
3 be taken more as flagging that I should pay more
4 attention because there is a sensitivity of which
5 I am being made aware. But in the event that
6 everything that is received in evidence goes to
7 the weight, if any, of the evidence, and that
8 would be as to testimonial -- as to documentary
9 evidence.

10 As to testimonial evidence, I've
11 indicated off the record that just about
12 everything that will come in will be received,
13 even if it's hearsay. But I did also indicate
14 specifically with respect to cross-examination,
15 that because of the relaxed evidentiary standard
16 being followed concerning the receipt of evidence,
17 there is a greater burden on the cross-examining
18 party, and, accordingly, a wider berth and robust
19 cross-examination is invited and should be
20 allowed, and I, in that connection, made clear
21 that there are certain disfavored objections,
22 those being asked and answered and unduly vague
23 and ambiguous for the reasons that I explained
24 when we were discussing off the record.

25 Is there anything else?

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1 Oh, I think we talked about
2 confidentiality, and this matter will not be the
3 subject of any protective order regarding privacy
4 or confidentiality of the arbitration or any
5 particular testimony based on what the arbitrator
6 knows thus far, but if there is anything that
7 comes up that requires that, I will entertain that
8 at that time.

9 And we talked about order of proof, and I
10 believe that we are going to accommodate the
11 experts, and we're going to testify essentially
12 out of order, if you will, with certain sides
13 presenting their experts on a day that might
14 follow the other side's. But we're going to be as
15 flexible as necessary, and I believe that will not
16 lead to any confusion as to scheduling and with
17 respect to matters being covered on direct or
18 cross that bear on both the claims in chief and
19 counterclaims.

20 The parties have agreed, and the
21 arbitrator has agreed, also, that to the extent
22 that same witness has testimony with respect to
23 both claims and counterclaims, that should be, but
24 I'm not going to require by order, should be the
25 subject of one appearance only, but leaving it to

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1 each side to decide how you want to handle that.

2 Is there anything else that we discussed
3 off the record that we should now put on the
4 record?

5 MR. WHITE: I don't believe so, Your
6 Honor.

7 ARBITRATOR HABERFELD: Okay. I talked
8 about no cross talk. I also have what I call the
9 Haberfeld antiskittle rule. That has to do with
10 papers going from one side to another, which might
11 happen. In order to preserve a civility and as
12 much calm in the series of hearings as possible,
13 all papers will go through me rather than being
14 pushed or skittled, if you will, across the table
15 to the other side.

16 MR. WHITE: Yes, Your Honor.

17 ARBITRATOR HABERFELD: Okay. Anything
18 else we should discuss?

19 Hearing nothing, I think I read in the
20 papers, and I hope that this is correct, that each
21 side has waived opening argument based upon your
22 submission of prehearing briefs, with which the
23 arbitrator is familiar, so that we will proceed
24 with the first witness, who I have been advised is
25 Mr. Randazza; is that correct?

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1 MR. WHITE: That is correct, Your Honor.

2 ARBITRATOR HABERFELD: Okay.

3 Mr. Randazza, I would ask you please, before we
4 get started, would you kindly print your name and
5 business address, and then I'm going to ask you to
6 please stand after you've done that, face me --
7 or, actually, our court reporter, whom we have
8 present, and to be sworn as a witness.

9 MR. WHITE: Mr. Randazza will be doing
10 that by affirmation.

11 ARBITRATOR HABERFELD: That's fine.

12 And you know how to do that,
13 Ms. Reporter?

14 THE COURT REPORTER: Yes.

15 ARBITRATOR HABERFELD: Fine.

16 MR. WHITE: Where would you like
17 Mr. Randazza to sit?

18 ARBITRATOR HABERFELD: I think we spoke
19 with the court reporter, and I think she would
20 like the witness chair to be where Mr. Randazza is
21 presently sitting, all the better to see him.

22 MR. WHITE: Would you like me to move,
23 then?

24 ARBITRATOR HABERFELD: I think it's fine.
25 I think it would probably work the way you have

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1 it, but what would work best for you, Mr. White?

2 MR. WHITE: It works for me, or at least
3 it does for the moment. If it seems that he's
4 looking -- it's difficult, then perhaps we'll find
5 a way to move around.

6 ARBITRATOR HABERFELD: Okay. Let's see
7 about that. We're good on that.

8 MS. KRINCEK: This chair is open, too.

9 MR. WHITE: Thank you.

10 ARBITRATOR HABERFELD: I would just ask,
11 Mr. Randazza, if you could, as much as you can,
12 although the questions will be coming from
13 Mr. White, who is to your right, and I am to your
14 left, and the court reporter is across from you,
15 to please try to be as much giving your testimony
16 to me and to the court reporter, rather than
17 looking to Mr. White, which would be making it
18 difficult to read your lips and to hear you
19 better.

20 MR. RANDAZZA: Okay.

21 ARBITRATOR HABERFELD: Fair enough?

22 MR. RANDAZZA: Sure.

23 ARBITRATOR HABERFELD: Okay. For
24 purposes of direct examination, and this is
25 applicable to all witnesses, just about anything

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1 comes in on direct.

2 On cross-examination, Mr. Randazza, I
3 would ask you to be as completely and strictly
4 under the control of the cross-examining attorney
5 as possible, not in any way giving a narrative,
6 being anything other than completely concise,
7 truthful, and responsive with your answer, and not
8 in any way anticipating or arguing those kinds of
9 things; fair enough?

10 MR. RANDAZZA: Fair enough.

11 ARBITRATOR HABERFELD: And I know that
12 it's very hard for lawyers to follow that, so we
13 may have another conversation about that, but I
14 just wanted to give that as we begin.

15 Anything before we start, Mr. Randazza,
16 that you would like to ask or say before we have
17 Mr. White give the first question?

18 MR. RANDAZZA: I don't think so.

19 ARBITRATOR HABERFELD: Okay. Mr. White?

20 MR. WHITE: Would you like him to be
21 sworn by affirmation?

22 Whereupon --

23 MARC J. RANDAZZA,
24 having been first duly sworn to testify to the
25 truth, the whole truth and nothing but the truth,

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1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WHITE:

4 Q. Good morning, Mr. Randazza.

5 A. Good morning.

6 Q. I'm going to be asking you questions
7 about a number of categories. The first one is
8 about your background and how you came to work for
9 Excelsior.

10 A. Okay.

11 Q. The second will be about your first years
12 working with Excelsior.

13 A. Okay.

14 Q. The next will be the time at which your
15 relationship with -- at Excelsior became
16 difficult.

17 A. Okay.

18 Q. The next will be the time at which you
19 left Excelsior.

20 A. Okay.

21 Q. Then I will also be asking you about the
22 Oron litigation in particular and about
23 Respondents' claims against you.

24 Let's start with your background.

25 A. Okay.

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1 Q. Can you tell me where you got your
2 college and law degrees?

3 A. My undergraduate degree is from the
4 University of Massachusetts at Amherst, and
5 majored in journalism and minored in Italian. My
6 law degree is from Georgetown.

7 Q. And did you get any postgraduate degrees?

8 A. Yes, two of them.

9 Q. Where are those?

10 A. I have a Master of Arts in mass
11 communication from the University of Florida, and
12 an LLM in international intellectual property law
13 from the University of Torino in Italy.

14 Q. Now are you -- in the last five years,
15 have you been called upon as a consultant by the
16 media to speak on First Amendment or intellectual
17 property issues?

18 A. Longer than that, actually. That began
19 in 2004.

20 Q. And can you describe very briefly what
21 types of things you've been called on?

22 A. Yeah. My first request to be a
23 commentator was by Fox News in, I want to say
24 2004 -- yeah, 2004, just prior to the 2004
25 election. I did some commentary on First

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1 Amendment and election law issues. And then
2 continued to do commentary for Fox nationally,
3 some local news media, as well, in Florida. Over
4 the next couple of years, when I moved out to --
5 when I left Florida, I stopped doing Fox, got a
6 little annoying. But then I got -- I got -- a
7 little too adversarial for me. But then we -- I
8 started doing commentary more recently for CNN
9 on -- on mostly First Amendment issues.

10 As far as print media, and -- I don't
11 even -- I couldn't even begin to truthfully list
12 how many times I've been interviewed by them from
13 2004 until now.

14 Q. And would the print media interviews also
15 be on First Amendment/intellectual property
16 issues?

17 A. Almost exclusively on those.

18 Q. When you got out of law school and
19 started working, did you work towards developing a
20 specialty?

21 A. Yes. It was my intent to do media law,
22 First Amendment, and intellectual property issues.

23 Q. And how did you go about developing
24 towards that specialty?

25 A. It was a little bit meandering at first,

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1 unfortunately. I took a job with a firm that
2 did -- that had me working primarily in their
3 condominium association practice. However, that
4 did have a few copyright and First Amendment
5 issues that would come up, often defamation issues
6 among board members and copyright issues, like --
7 the most interesting one, or the first one that I
8 had I thought was -- there was some issues with
9 licensing and playing the radio in clubhouses on
10 golf courses and things like that.

11 Q. Did you eventually take a different job?

12 A. I did. In, I believe, 2004, it might
13 have been 2004. I started working for Larry
14 Walters at Weston, Garrou & DeWitt.

15 Q. What type of work did you do at that
16 firm?

17 A. Well, they were primarily a First
18 Amendment and intellectual property firm. They
19 were a small firm with their main office in
20 Los Angeles, but they had a small satellite office
21 in Orlando, and I became familiar with Mr. Walters
22 through a case I did at the prior firm for an
23 adult entertainment company.

24 Q. Did they have a particular industry
25 client base for their IP and First Amendment work?

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1 A. They were heavily slanted toward adult
2 entertainment.

3 Q. Did you, when you were working for them,
4 service adult entertainment clients?

5 A. Yes, almost exclusively.

6 Q. When did you first come to meet or work
7 with Mr. Gibson at Excelsior?

8 A. It was while I was at Weston Garrou.
9 Again, I'm not entirely certain exactly when it
10 was, but it was just prior to me being named a
11 partner there.

12 Q. Did there come a time when you had a
13 discussion with Mr. Gibson about the possibility
14 of you joining Excelsior as an employee?

15 A. Yes.

16 Q. About when was that?

17 A. I would say that was in 2009, maybe
18 spring or summer of 2009.

19 MR. WHITE: And, Your Honor, as we go
20 through this, I'm going to ask for Mr. Whitehead's
21 assistance in getting out the relevant volumes of
22 exhibits for you and for the witness, if that's
23 all right.

24 ARBITRATOR HABERFELD: As long as it's
25 not any way disturbing to the process, it's fine

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1 with me.

2 MR. WHITE: Okay.

3 ARBITRATOR HABERFELD: Particularly if it
4 assists the process.

5 MR. WHITE: Yes.

6 MR. WHITEHEAD: And, Your Honor, just for
7 your reference, both parties have put their sets
8 of exhibits for you behind here. Those are
9 Respondents' and ours are right here, and I'm
10 going to pull out the first volume for you.

11 ARBITRATOR HABERFELD: Will we be going
12 pretty much in order in which they are tabbed, so
13 there is only one volume?

14 MR. WHITE: I'm afraid not.

15 ARBITRATOR HABERFELD: All right. Which
16 one? Which volume?

17 MR. WHITE: Would you put the first
18 volume?

19 MR. WHITEHEAD: Yeah, that's the first
20 volume.

21 MR. WHITE: For the witness, as well,
22 please?

23 MR. WHITEHEAD: Yes, of course.

24 BY MR. WHITE:

25 Q. And, Mr. Randazza, I'm going to ask you

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1 to look at our Exhibit 1.

2 A. Okay.

3 Q. Take a look at it sufficiently and tell
4 me if you recognize what it is?

5 A. Yes, I recognize it.

6 Q. Is that the contract you eventually
7 executed with Excelsior?

8 A. Yes, it appears to be.

9 Q. Is that your signature on the last page
10 of it?

11 A. That is my signature.

12 Q. Now, how did the process of drafting a
13 contract get started? Who sent the first draft?

14 A. Jason sent me the first draft of the
15 agreement.

16 Q. And did you make changes?

17 A. I did.

18 Q. Were you being helped by anyone in this
19 process?

20 A. I was.

21 Q. And who was that?

22 A. Jessica Christensen.

23 Q. Did you have any understanding based on
24 your communications with Mr. Gibson that he was
25 being assisted by anyone?

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1 A. I did believe that he was.

2 Q. Based on what?

3 A. Well, Mr. Gibson had often communicated
4 to me that he was a -- that he had a higher degree
5 in human resources. He had communicated to me
6 that he had done work with an attorney John
7 Dozier, and the nature of the agreements that he
8 sent me, I was under the impression had been
9 professionally drafted.

10 Q. And when you were going back and forth
11 with Excelsior over the possibility of joining
12 them, did they give you everything you asked for?

13 A. No.

14 Q. Can you give me an example of something
15 that you negotiated for that they refused?

16 A. You know, the most important thing that I
17 wanted, that I didn't -- that we didn't do was
18 we -- if I moved from -- at the time I was living
19 in Florida, and there was some contemplation that
20 I would have to move to San Diego. And if I did
21 that, I would not have been able to afford a down
22 payment on a house, so I asked them if they would
23 provide me with a loan for the down payment. They
24 declined to do that.

25 Q. But other terms that were important to

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1 you were included?

2 A. Yes.

3 Q. Let's talk about some of the terms in the
4 agreement. Would you first look at Paragraph 7B,
5 which was -- which is on Page 6 of the contract.

6 Let me know when you have it there.

7 A. Yes, I have it.

8 Q. This is a severance term. Is this
9 something you specifically negotiated?

10 A. This was important to me.

11 Q. Why was it important to you?

12 A. Well, I was leaving a law firm that I had
13 established a good relationship with. I made
14 partner there much faster than most associates
15 did. Giving that up was a big deal to me.

16 I also had a new baby at the time, and I
17 was a bit worried taking the risk of going with
18 this company, and then maybe having it not work
19 out, especially if I had to move all the way
20 across the country to San Diego. I didn't want to
21 be left high and dry with a -- you know, a new kid
22 and new wife and a family to provide for.

23 Q. Please look on the next page, Page 7,
24 under the heading Exceptions.

25 Do you see on Page 7 and 8 a series of

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1 disciplinary steps?

2 A. I do.

3 Q. Do you know where those came from?

4 A. I copied and pasted those almost verbatim
5 from another document that Mr. Gibson sent me as
6 part of their offer. They had an employee
7 handbook that had -- again, I don't know if I
8 might have edited word to word, but I think if you
9 look at the provisions here and you look at the
10 handbook, you will see that it's very clearly
11 plagiarized from it.

12 Q. Have you reviewed the handbook that is
13 Plaintiff's -- excuse me -- Respondents'
14 Exhibit 340, 340?

15 Have you reviewed it in preparation for
16 this?

17 A. I have.

18 Q. And is that -- does that appear to be the
19 one they provided you with?

20 A. It does.

21 Q. Why was this important to you, a
22 progressive discipline system?

23 A. Well, it was already in their policies.
24 It was in their offer papers. I wanted to make
25 sure that it -- I really liked it, so I wanted to

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1 make sure that if they changed their handbook,
2 that that remained part of the deal. And I wanted
3 to be able to have the ability to correct any
4 issues if we had any disagreement on how things
5 were going.

6 Q. Mr. Randazza, did you discuss during the
7 negotiations whether or not you could have outside
8 clients while you were being general counsel of
9 Excelsior?

10 A. Yes.

11 Q. And did you and Mr. Gibson ever discuss
12 sort of a model or an example of how that might
13 work?

14 A. Actually, yes. When -- you know, when
15 Jason first approached me about this position, you
16 know, it was sort of an oblique reference. I got
17 an e-mail from him really expressing a bit of
18 dissatisfaction with how my firm was being -- was
19 acting towards his affairs.

20 Like when we had an emergency, we ran it
21 like an emergency room. If he had an emergency,
22 we jumped right on that. But something like an
23 ongoing contract might get put to the side for a
24 few weeks. I agreed that perhaps it was a little
25 bit less service than he should get, and he

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1 mentioned -- he mentioned something about, you
2 know, do you know anybody who might be interested
3 in being our general counsel, and I think there
4 might have even been an emoticon wink in there.

5 And he expressed that he wanted to have
6 his own Gill Sperlein. And Gill Sperlein was the
7 general counsel for another adult entertainment
8 company called Titan Media at the time. But he
9 had --

10 Q. Did Mr. Sperlein have an outside practice
11 at the time?

12 A. He did. So that was -- you know, I saw
13 that as a -- I saw his model as a pretty good
14 model, and so that was part of what piqued my
15 interest about doing this.

16 Q. Did you discuss whether or not there
17 would be any benefit to you maintaining an outside
18 practice for Excelsior?

19 A. Yes. I felt that it would be of benefit
20 to them, especially given the way that I foresaw
21 the position developing.

22 Q. How would it be a benefit?

23 A. Well, I didn't get the impression this
24 was going to be a typical general counsel position
25 where you refer out, where you are essentially

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1 managing outside counsel, you know. The way Gill
2 did it, he did all of their work for Titan, as
3 well. So it wasn't really a GC, it was doing a
4 lot of litigation, a lot of hands-on work, rather
5 than managing outside counsel.

6 Q. So how would having an outside practice
7 assist Excelsior in your view?

8 A. Well, I also explained that, you know, I
9 felt like going in-house was somehow -- you know,
10 could make some of my skills atrophy. Also, at
11 that point, I had developed a lot of connections
12 in the adult entertainment industry, a lot of
13 clients that I continued to do work for that I
14 think had symbiotic needs. So keeping those
15 relationships going, I think would only have made
16 me able to do my job better.

17 Q. I'm going to read you a sentence from
18 Mr. Lowderman's deposition.

19 And who is Mr. Lowderman, just for the
20 Arbitrator's benefit?

21 A. He's sitting at the end of the table.

22 Q. What was his position at Excelsior?

23 A. He's a part owner of the company, a large
24 shareholder in the company, and a -- I want to say
25 chief technology officer.

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1 Q. Let me read this sentence from his
2 deposition, and you tell me whether it accurately
3 reflects a discussion you were having.

4 A. Okay.

5 Q. You testified, We allowed him to have
6 outside clients to help him maintain a legal
7 presence so that it would help the company in any
8 future endeavors.

9 Does that accurately reflect the
10 discussion?

11 A. It does.

12 Q. All right. Would you please look again
13 at Exhibit 1 before you?

14 A. Yes.

15 Q. Now, did you do anything to structure --
16 in negotiating to structure this agreement to make
17 it clear that you would be able to have outside
18 clients?

19 A. Two things, really. If you look at
20 Paragraph 1, I wanted to make it clear that there
21 might be some, you know, serious impositions on my
22 time for my existing clients. For example, I had
23 some litigation going on that I couldn't just set
24 aside. The clients wanted to go with me rather
25 than stay with my firm, my prior firm. So I

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1 wanted to make it clear there that that would be
2 going on.

3 But, additionally, I wanted to make it
4 clear that while that current work would taper
5 down, that I would also have ongoing
6 representation to other private clients.

7 Q. Where did you make that clear?

8 A. Well, I made that -- I put that in
9 Paragraph 6C, but I also deliberately put a
10 reference to it in Paragraph 1, because I didn't
11 want -- I didn't want at any point for this to be
12 seen as a surprise. You know, sometimes people
13 read through a contract, and by the time they get
14 to the sixth or seventh page, perhaps their
15 attention isn't as clear. I wanted to make sure
16 that if this was an issue, that it was front and
17 center.

18 Q. And did you -- there is language in 6C
19 about -- if you turn to that, which is on --
20 beginning on Page -- pardon me. The part I'm
21 going to ask you about is on Page 6.

22 A. Okay.

23 Q. There's a reference to such services
24 being rendered through a separate legal entity --

25 A. Yes.

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1 Q. -- such as Marc Randazza, PA, or another
2 outside law firm.

3 A. Yes.

4 Q. What was the purpose, as you understood,
5 of that term?

6 A. Well, I wanted to make sure that it was
7 clear that I would be practicing with that outside
8 entity, or even, you know, while this never
9 happened, I thought it might be possible that I
10 would wind up as of counsel to another law firm,
11 larger law firm. Really at the time I thought
12 there was a law firm in Miami that I was doing a
13 lot of work for as a contract attorney, and I
14 suspected that it might develop that I would
15 become of counsel to them, although that never
16 happened.

17 Q. Now, when did you contemplate that you
18 would be doing this work if you were doing outside
19 work?

20 A. Well, I didn't expect it to take up all
21 that much time, so I would do it nights, weekends,
22 beforehand. You know, a lot of my clients were
23 back on the East Coast, and I thought if I moved
24 to the West Coast, well, that would give me some
25 nice time zone arbitrage to do it, but I would be

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1 doing it essentially on my own time.

2 Q. Did you negotiate for any time off that
3 would empower you to use, if you needed to go to a
4 hearing or something, for a private client?

5 A. I did. I mean, if you look in the
6 contract, there is a pretty generous amount of
7 paid time off.

8 Q. Are you looking at Page 3, Item E?

9 A. Actually, I was looking at Page 7. But
10 it's also -- I think it's also referenced -- it's
11 referenced here -- I'm sorry. No. The numbers
12 were beguiling me.

13 I am looking at 3E. It says I get
14 15 days in the first year; second and third year,
15 20 days, 25, and then 30 for the seventh year
16 onward.

17 Q. What was your purpose in negotiating a
18 fairly generous amount of paid time off?

19 A. Well, of course I would want to have the
20 maximum amount of time off possible, but, also, I
21 wanted to make sure that if I had, for example, a
22 five-day arbitration I had to go to while I was
23 working for them, that I could take that time off,
24 and still have time to take off with my family.

25 Q. I would like to talk to you now about the

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1 Remuneration section, particularly

2 nondiscretionary bonuses, which is on Page 3,

3 Paragraph C.

4 Would you turn to that, please?

5 A. I see it.

6 Q. Did you also deliberately negotiate the
7 terms of this paragraph?

8 A. Yes.

9 Q. So this says that you get, as a
10 discretionary bonus, 25 percent of any settlement
11 funds paid to Excelsior in connection with legal
12 matters.

13 What -- why did you negotiate the next
14 sentence about vesting? Can you read that and
15 tell us why you did that?

16 A. Well, the first part was actually
17 proposed by Excelsior, the 25 percent. I wanted
18 to make it clear that in the event that -- you
19 know, I looked at the math here, and I said it is
20 possible I could get a settlement or a judgment
21 that was large enough that it was more economical
22 to pay my severance than to pay my bonus, and I
23 could see that there would be a way to work that,
24 so I wanted to make sure that if the benefit
25 inured to the company that I got this, if I got

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1 something like that, they couldn't just then
2 immediately fire me, keep the money, and pay me
3 the severance, and then I'm out.

4 Q. The next part says, Settlement fund
5 bonuses will vest at the time of settlement.

6 Do you see that?

7 A. I do.

8 Q. Is that something you also deliberately
9 negotiated?

10 A. I did.

11 Q. And the next sentence is, If
12 Mr. Randazza's employment terminates for any
13 reason by either party, Randazza will be entitled
14 to all vested settlement bonus amounts, regardless
15 of when they are collected.

16 Why would you negotiate a term like that?

17 A. Because I could also see that perhaps the
18 settlement funds wouldn't come in for a long time,
19 so I wanted to make sure that that was also
20 something clear, that if I was working for a
21 certain goal, I didn't want that goal to evaporate
22 simply because the relationship might not have
23 continued.

24 Q. Now, this doesn't explicitly say whether
25 that 25 percent is of gross or of net, does it?

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1 That should be "or of net."

2 A. No, it doesn't make it -- it doesn't make
3 it clear.

4 Q. Did you have any discussions with
5 Mr. Gibson during the course of your work with
6 Excelsior about which one it was?

7 A. Yes. It was my understanding, and I
8 believe his understanding, that it was from the
9 gross. And, in fact, from the very first
10 settlement that came in, it was gross.

11 Q. Would you please turn to Exhibit 30 in
12 the binder before you?

13 A. Yes.

14 Q. And let me know when you have it and you
15 are ready to talk about what it is.

16 A. I am ready.

17 Q. Do you recognize what this is?

18 A. Yes. This is an e-mail exchange that
19 Jason and I had where we discussed whether it
20 would be net or gross.

21 And you can see the -- on the second page
22 of the exhibit, Jason began the discussion in
23 February of 2010, really bringing up the issue of,
24 you know, what would happen if possibly our
25 expenditures on a file wind up exceeding the

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1 amount of the settlement, or making it that they
2 actually get nothing, but I still get my
3 25 percent. And I acknowledge that, you know, we
4 didn't even ponder that at the time.

5 However, I did offer to change the
6 agreement, if he wanted to, but I wanted to make
7 sure that the -- you know, that wasn't the only
8 equity that we took into consideration.

9 Q. Did you, in fact, change the agreement?

10 A. We did not. When I proposed, for
11 example, you know, I had -- I had in mind at that
12 time a settlement that we came to that, you know,
13 I was -- I was particularly disappointed in,
14 because we had gotten -- I don't remember the
15 exact amount, but we had gotten something like a
16 \$600,000 judgment against a trademark infringer,
17 cybersquatter, so that would have been a pretty
18 large bonus for me.

19 And Jason made the decision that he would
20 of rather -- he made the decision to settle for
21 something like, you know, \$30,000 and the transfer
22 of a domain name that I didn't think was
23 particularly worth all that much, but he was the
24 boss, so I did what he told me to do.

25 But there you can see, if they were going

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1 to change the equities on net versus gross, maybe
2 we could put in some consideration for what
3 happens if we get a domain name that's worth a lot
4 of money, I don't know how I get a quarter of
5 that.

6 Jason and I discussed that in this
7 e-mail, and, you know, Jason decided at the end of
8 that, let's just keep it the way we've had it all
9 along.

10 Q. Let me ask you about that. On the first
11 page of the e-mail, the second to last
12 paragraph --

13 A. Yeah.

14 Q. -- in Mr. Gibson's last e-mail to you,
15 saying, So to keep things clean and simple, I'm
16 thinking maybe we should just continue under the
17 original agreement where we pay all expenses,
18 assume all risks, and I can freely hit the brakes
19 on the expenses and settle at will if I feel it
20 was the business's best interest?

21 A. Yes.

22 Q. Was that what you understood the
23 agreement continued to be after that exchange?

24 A. Yes. I think it couldn't be more clear.
25 We were -- it was going to be 25 percent of net,

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1 but Jason had the right, as always, to settle on
2 whatever terms he wanted.

3 Q. Now, finally, with respect to this
4 contract, let's talk about the choice of law
5 provisions.

6 A. Okay.

7 Q. There are two places here that talk about
8 California law. Can you tell me, was there a
9 discussion of what law should apply, or did you --
10 let me ask it this way: Did you make a deliberate
11 choice about what law you wanted to apply?

12 A. Yes. I can't recall if the original
13 agreement as presented proposed California or not.
14 I think it was, but I wanted it to be California,
15 because at the time, there was some -- when we
16 signed this, there was lack of clarity about where
17 I would be working.

18 What I contemplated when we first signed
19 the agreement was really that I was going to move
20 to Massachusetts and work off site, and that was
21 perfectly permissible under the agreement. The
22 other likelihood was that I would move to the
23 Tampa area, where my wife already owned a house,
24 if we could get our tenant to move out of that,
25 that would have been convenient. But I also, you

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1 can see the agreement, contemplated a possible
2 move to California. And I wanted to make sure of
3 two things. One, I knew that California law
4 was -- was a -- was employee-friendly, it had a
5 large developed body of law around most
6 situations.

7 But, also, I wanted to make sure that no
8 matter how much this position made me move from
9 one place to the other to the other, that the
10 agreement itself didn't effectively change every
11 time I did a move.

12 Q. And when you entered into the agreement,
13 did Excelsior have a presence in California?

14 A. Yeah. In fact, that was the only place
15 they had offices. Their headquarters was in
16 San Diego. The executives all lived in the Tampa
17 Bay area, and they had a house that they shot
18 movies in there, but there was no office facility
19 in Florida.

20 Q. All right. So let's move into the second
21 area of inquiry, and that's before 2012, your
22 experiences working for Excelsior.

23 A. Uh-huh.

24 Q. About when did you start working for the
25 company?

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1 A. You know, I haven't reviewed anything to
2 give me a recollection of the exact date, but I
3 want to say it was in 2008, maybe 2009. I got the
4 referral from a -- from the associate that I
5 actually replaced at Weston Garrou.

6 Q. And that's my fault for asking a vague
7 question. When did you start under this contract
8 working for Excelsior?

9 A. Oh, I'm sorry. That would have been, I
10 think -- I think July; June or July of 2009.

11 Q. Now, I asked you working for Excelsior.
12 Was the legal work you did mostly for Excelsior --

13 A. You mean --

14 Q. -- the entity?

15 A. -- from 2009 on?

16 Q. Yes.

17 A. Oh, yes. No, no. In fact, I did almost
18 nothing for Excelsior. In fact, most the vast
19 majority of the work I did was for its subsidiary
20 Liberty Media Holdings.

21 Q. So, for instance, when you filed
22 lawsuits, on whose behalf did you file them?

23 A. They were always filed for Liberty. I
24 don't recall ever filing one for Excelsior.

25 Q. Did Mr. Gibson give you business cards

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1 for different entities?

2 A. Yes. In fact, we got -- I got business
3 cards from Excelsior Media and Corbin Fisher, and
4 I think -- I think I got a box for Liberty Media
5 Holdings, but really the only business cards I
6 ever used were the Corbin Fisher business cards.

7 Q. What's Corbin Fisher?

8 A. Corbin Fisher is really the trade name
9 that all of this is underneath. Corbin Fisher is
10 the Website that Liberty manages and Liberty
11 publishes, and that is what the company's really
12 known as, is Corbin Fisher.

13 Excelsior Media is almost more of a front
14 that it tries to -- so that when they move into a
15 place or they have a Website, people can say, it's
16 just a media company, when, in fact, it's an adult
17 entertainment company.

18 Q. Now, when you started working for
19 Excelsior under this contract, where were you
20 working physically?

21 A. From my house in Lake Mary, Florida.

22 Q. And did you eventually move to
23 California?

24 A. I did.

25 Q. How soon?

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1 A. It wasn't long thereafter. I had really
2 been contemplating whether I should move to --
3 move to Massachusetts, as had really been my plan,
4 or go someplace where the company's headquarters
5 was.

6 I felt like I could be more effective and
7 make a better impression on the company and do a
8 better job by getting up and moving to their
9 headquarters and working there.

10 Q. Did they encourage you, also, to move to
11 California?

12 A. Yeah, they incentivized it. They
13 actually proposed that if I moved there, I would
14 get a salary bump to account for the higher cost
15 of living in San Diego.

16 Q. Now, during this time from 2009 through
17 2011, how would you describe your personal
18 relationship with Mr. Gibson?

19 A. It grew pretty close pretty quickly.
20 He -- I know when I first went out to San Diego to
21 go looking for a house to rent, he let us stay at
22 a house that he rented for the -- in San Diego,
23 and gave me and my wife and daughter his own room
24 to stay in there. And I thought that was a pretty
25 nice gesture.

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1 And from there forward, every time that
2 he and the other executives came into town, we
3 would usually -- which was on a regular basis, but
4 never actually scheduled, as far as I knew, we
5 would have a lot of meals together, spend a lot of
6 personal time together. We would spend hours
7 talking in his office from time to time, go out
8 for drinks together.

9 Q. And did he become fairly close to the
10 rest of your family, as well?

11 A. Yes. In fact, he became very close to my
12 wife, and, you know, even my kids. You know, my
13 daughter called him Uncle Jason.

14 Q. Would you please look at Exhibit 50,
15 which was the last one in the binder in front of
16 you.

17 A. Yes.

18 Q. I don't believe that's --

19 A. Oh, I'm sorry. That's 49.

20 Got it.

21 Q. The very last exhibit.

22 A. Yes.

23 Q. Do you recognize that e-mail?

24 A. I do.

25 Q. This is an e-mail in which you are

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1 expressing gratitude to Jason, Mr. Gibson, for
2 something.

3 Does this characterize the -- at that
4 point in time, 2011, the friendliness and
5 closeness of your relationship?

6 A. Yeah. At the time, I was -- you know, I
7 had been working so much, that I really neglected
8 my health. So he took me to a -- Jason picked me
9 up one morning and took me to a weight loss
10 doctor. I was like 205 or so at that time.
11 Brought me there, and I think he even paid for my
12 initial visit, and I thought it was really nice of
13 him.

14 Q. I hope you are not implying that 205 is
15 expressive. Well, strike that.

16 A. Well, I'm only --

17 ARBITRATOR HABERFELD: Off the record.

18 (Whereupon, an off-record
19 discussion was had.)

20 ARBITRATOR HABERFELD: Back on the
21 record.

22 BY MR. WHITE:

23 Q. So can you describe, once you arrive in
24 San Diego and you are working for the company,
25 generally what your duties were with connection to

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1 the company's litigation?

2 A. Aside from committing gross faux pas
3 about weight, when -- I'm sorry. Could you repeat
4 the question?

5 Q. Yes. Can you describe generally your
6 duties with respect to litigation for the company
7 at the time you arrived in San Diego during that
8 time period?

9 A. We already had some litigation ongoing
10 that started when I was with Weston Garrou. I
11 think the first two cases that I worked -- the
12 very first matter that I worked on as general
13 counsel was a lawsuit against a former actor for
14 the company by the name of Breck Orshal. He
15 had -- he was -- he had contracted to do six
16 scenes for the company, had only done five of
17 them, and then had a change of heart that he
18 didn't want to appear in the sixth one. So the
19 company asked me, of course, to get that \$10,000
20 back from him.

21 Q. And was that one of your earliest things
22 that Mr. Gibson tasked you to do?

23 A. It was.

24 Q. And how would you characterize that
25 particular litigation?

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1 A. It was pretty amicable with the opposing
2 counsel. He was a pretty nice guy. In fact, I
3 wasn't -- you know, he and I had an informal
4 mediation with me, him, and his client in his
5 office. Although his client was upset, he put a
6 lot of water on the fire and seemed to get us to a
7 place where we could probably settle the case.

8 Q. Did he make an offer?

9 A. He did. And, you know, I was -- I was
10 instructed to be very, you know, hard-core about
11 the settlement. But he took me aside and said,
12 you know, Look, Kid, can you -- can you get this
13 thing settled for 9,500 bucks just so that I can
14 go in and tell my client that I brought any value
15 to him at all?

16 And I told him that while I didn't have
17 that authority at that time, that seemed
18 reasonable, I would -- I would do what I could to
19 get that done.

20 Q. Did you take that to Mr. Gibson?

21 A. I did.

22 Q. What was his response?

23 A. Literally or do you want me to make it
24 nice language?

25 Q. If you remember as accurately as you can

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1 remember?

2 A. Fuck no. He's paying every fucking
3 dollar back. Fuck him.

4 Q. How would -- how does that compare with
5 the type of stance that Mr. Gibson typically took
6 in litigation that he was directing through your
7 relationship with him?

8 A. It was consistent. You know, it was, you
9 know, be -- be hard with people and get -- you
10 know, get the maximum. It was more like, you
11 know, Express my will, and that's what you are
12 going to do. And if he felt that somebody owed
13 him \$10,000, \$9,500 wasn't going to cut it.

14 Q. Now, were you present for Mr. Gibson's
15 deposition in this case?

16 A. Yes, I was.

17 Q. Did you hear him suggest that he was
18 concerned that your aggressiveness would hurt the
19 company's reputation?

20 A. I did hear him say that.

21 Q. Let me read you one question and answer.
22 I'm going to ask you whether it accurately
23 reflects your memory of the way things worked?

24 The question was: Wasn't it, in part,
25 one of your goals to make Corbin Fisher known for

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1 going after infringers, to deter them?

2 The answer was Not to the point of
3 driving our customer base away.

4 Does that answer accurately --

5 MS. KRINCEK: I just want to state an
6 objection for the record. I'm not sure what
7 portion of the transcript he's referring to, but I
8 believe it refers to a portion where they were
9 talking about public relations for the firm, which
10 would be not relevant to this subject matter.

11 To the extent he's going to cite parts of
12 the deposition without including other relevant
13 parts to give you context, I don't think it's
14 helpful. I think it's misleading and confusing.

15 ARBITRATOR HABERFELD: I think we're
16 going to have to go to page and line.

17 MR. WHITE: Certainly. I'll pass that
18 line and come back to it, then.

19 ARBITRATOR HABERFELD: Will that satisfy?

20 MS. KRINCEK: That's fine.

21 ARBITRATOR HABERFELD: Okay. Page and
22 line will be the rule.

23 MR. WHITE: Yes.

24 BY MR. WHITE:

25 Q. Was he concerned between 2009 and 2011 as

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1 he was directing you in litigation about not going
2 after the little guy for fear of how it would make
3 Corbin Fisher look?

4 A. Not at all. In fact, I think he actually
5 relished that. In one of our first cases -- one
6 of the first cases that I filed against a
7 copyright infringer was against a guy, I remember
8 his -- he went by the name of A.D. Trice. This
9 guy was a -- lived in Dallas. He was unemployed,
10 had been unemployed for quite a while, and was --
11 you know, nevertheless, he was still stealing
12 their content, burning it to DVDs, and selling
13 those on eBay.

14 Despite the fact that he didn't really
15 have any money, we -- I was instructed to go after
16 him hard and to get a large judgment against him
17 and make it public so that other people would be
18 afraid of stealing from Corbin Fisher.

19 Frankly, I thought it was a good policy.
20 It was to -- we would go against a lot of people,
21 and Jason liked that fact because the more we came
22 down on somebody small, the more it made the
23 press, and then the more it made the next
24 settlement easier.

25 Q. Was the impact of public settlements part

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1 of your strategy, as well?

2 A. It was the entire executive team's
3 strategy, as far as I knew, that we would -- you
4 know, we would often get a stipulated judgment or
5 a public settlement for a very large amount of
6 money. We would accept payment of a much smaller
7 amount of money with the rest of it either, you
8 know, abated or suspended until -- you know,
9 unless the person then made it public that they
10 really only paid a thousand dollars or \$2,500 or
11 something like that.

12 But that -- that was on -- you know, that
13 was our general strategy, to make it appear that
14 we were extremely aggressive about litigation, and
15 that you should be just as afraid of stealing our
16 content as perhaps you were of stealing Titan's
17 content, which was, again, following the Gill
18 model.

19 Q. Did Mr. Gibson convey his expectations
20 about aggressiveness to you verbally or in writing
21 or both?

22 A. Both.

23 Q. Let's take a look at an example. Would
24 you please look at Exhibit 34 in the notebook
25 before you?

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1 A. Yes, I see it.

2 Q. Take a look --

3 ARBITRATOR HABERFELD: One moment,
4 please.

5 MR. WHITE: I beg your pardon.

6 ARBITRATOR HABERFELD: Go ahead.

7 BY MR. WHITE:

8 Q. And tell me when you recognize it and
9 can -- make sure you are at 34, and tell me when
10 you recognize it and can talk about it?

11 A. Okay. I am at 34. I recognize it, and I
12 can talk about it.

13 Q. This e-mail is a -- is this an exchange
14 of e-mails about what sort of warnings to put at
15 the beginning of films?

16 A. Yes.

17 Q. And take a look at the part -- let's see
18 here -- at the bottom of the first page. Do you
19 see it, the portion of the e-mail from Mr. Gibson?

20 A. I do.

21 Q. Where it says, That verbiage is a start,
22 but I'd still like to remind them that stealing
23 the video is a felony. And then later on, Whether
24 the FBI enforces that or not, it is important they
25 know they have committed a serious criminal

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1 offense. And maybe put in there the civil

2 penalties when we come and sue their ass.

3 Do you see that?

4 A. I do.

5 Q. Is that fairly characteristic of the sort
6 of aggression that Mr. Gibson conveyed to you that
7 he expected?

8 A. I would say it's actually a bit light.
9 You know, in fact, there was a while that I had to
10 continually remind him that I could not threaten
11 criminal sanctions in negotiations in order to get
12 a higher civil penalty. And he did want me to try
13 and get some prosecutors interested in going after
14 some of these little guys to -- you know, figure
15 if one person went to jail for stealing a Corbin
16 Fisher video, that would certainly make piracy
17 drop.

18 MS. KRINCEK: For the record, we noticed
19 recently that this exhibit and several others, the
20 timing of them, of the exhibits does not make
21 sense. And I'm not sure if it's the matter that
22 is was printed out, but, for example, on the first
23 page of this one, the top -- the top e-mail is at
24 July 2nd at 12:42, and then the next one is an
25 earlier e-mail, same day, at 12:34, and then an

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1 e-mail below that is a later e-mail, July 2nd at
2 3:26.

3 And that happens with several of the
4 e-mails that were produced in the matter. So I
5 don't know if it's a matter of the way that they
6 were printed, but I'm not entirely sure why that
7 is or if it means that the e-mails are not in the
8 proper order as they are on this page.

9 THE WITNESS: I can help you with that,
10 Your Honor.

11 ARBITRATOR HABERFELD: Let's find out
12 what Mr. White wants to do about it.

13 MR. WHITE: I'm happy to have
14 Mr. Randazza say what he understands to be the
15 issue.

16 THE WITNESS: We were often in different
17 time zones when these were going back and forth,
18 so I'm reasonably certain that the time that you
19 see here is consistent, like if you look at -- I'm
20 just looking at the first page. Jason sent an
21 e-mail at 3:26 p.m., and then Brian sent one at
22 3:28, and then you see that there's one from me at
23 12:42.

24 I would strongly suspect if we looked at
25 everybody's calendars, we would probably figure

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1 out that I was in California at that time, and the
2 other gentlemen were in Florida.

3 That's a pretty common thing that I see
4 when people are sending e-mails across multiple
5 time zones.

6 MS. KRINCEK: Their e-mails, however, I
7 understand are on the same time zone, so the same
8 time should be reflected.

9 And, also, just when I was looking at --
10 for the record, I also saw this problem with
11 Exhibit 36, and, also, there was one other,
12 Exhibit 40.

13 And I checked within one of these to see
14 if a three-hour time zone difference would account
15 for the different times, but it didn't appear to
16 me that it would. So I just -- for these
17 exhibits, I just wanted to bring that to the
18 attention of the arbitrator.

19 ARBITRATOR HABERFELD: Noted.

20 What would you propose that we do about
21 it, Mr. White?

22 MR. WHITE: I propose that, for instance,
23 I'll ask Mr. Gibson whether he thinks they are
24 fabricated, and I don't believe he will. And I
25 could ask Mr. Randazza about the method he used to

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1 produce them or gather them for production and
2 discovery, and then I think it would go to the
3 weight.

4 ARBITRATOR HABERFELD: My suggestion
5 would be that if that's the way you want to handle
6 it, that's the way we will handle it. Another way
7 might be to reserve this issue unless you feel
8 that we need to deal with it now, and possibly get
9 with Ms. Krincek or Mr. Thomas about to see if
10 there is some way that it can be satisfactorily
11 resolved without taking hearing time and
12 testimony. But if not, we'll do it the way you
13 want and we'll do everything on the record.

14 MR. WHITE: I mean --

15 ARBITRATOR HABERFELD: It appears that
16 they might not be satisfied that it's going to
17 come to a resolution for me anyway, but I leave it
18 to you to decide how you want to do it. Go ahead.

19 MR. WHITE: I understand, and I will not
20 address it now. I will take it up later.

21 ARBITRATOR HABERFELD: I have it in my
22 notes; 34, 36, and 40.

23 BY MR. WHITE:

24 Q. Mr. Randazza, was the level of
25 aggressiveness that was urged upon you consistent

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1 between Liberty suing people for intellectual
2 property violations and Liberty suing, for
3 instance, past employees?

4 A. Yes. You know, it was -- you know, Jason
5 was understandably angry at people stealing his
6 intellectual property. That was their work.
7 That's their art. And when somebody else is
8 taking it and making money off of it, then that
9 would upset him.

10 But, you know, it would -- it would
11 certainly blow a lot of wind into the sails of
12 litigating the matter aggressively. As far as
13 litigating against former employees, we never
14 actually, to my recollection, sued a former,
15 quote, unquote, employee, but we did go after a
16 number of people who were former actors for the
17 company.

18 I think they were all -- they were all
19 categorized as independent contractors.

20 Q. Let me ask you a questions about one in
21 particular. Do you remember someone named Justin
22 Krueger?

23 A. I do.

24 Q. And was there a dispute with him?

25 A. There was.

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1 Q. What was the general nature of it,
2 without going into detail?

3 A. Copyright infringement.

4 Q. And what was he doing to infringe
5 Liberty's copyright?

6 A. He was using photographs of himself, but
7 that were the property of Corbin Fisher, to
8 promote himself on a prostitution Website.

9 Q. Did you receive instructions about how
10 hard to deal with that?

11 A. Yes.

12 Q. Would you please turn to Exhibit 42 in
13 the binder before you?

14 A. Yes, I see it.

15 Q. Please take a look at the first page,
16 which is an e-mail, and then the second page,
17 which is a letter, just enough to see if -- answer
18 questions about it.

19 A. Yes. This is a proposed letter to
20 Mr. Krueger's attorney.

21 Q. Now on the first page, did you send it to
22 Mr. Gibson?

23 A. Yes.

24 Q. Was it typical that you would send demand
25 letters to Mr. Gibson, or was this a special case?

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1 A. I would often send them to him for his
2 approval. You know, sometimes he didn't want to
3 be bothered with it, but I thought that this one
4 was important to send to him.

5 Q. Now on the next page, I see the letter is
6 dated January 2011, and it's on the letterhead of
7 Randazza Legal Group?

8 A. Yes.

9 Q. Did you do many letters from Randazza
10 Legal Group?

11 A. When it came to litigation communications
12 or demand letters, it was almost exclusively on
13 RLG letterhead, although earlier in the beginning
14 we did have it on Liberty or Corbin Fisher
15 letterhead.

16 Q. Is there any particular strategy behind
17 doing that?

18 A. Yeah. You know, we wanted -- we wanted
19 the opposing parties to see that there was a law
20 firm behind the threats, not just a one-person
21 legal department. Wanted them to see that there
22 were multiple offices. And, also, I didn't
23 want -- I wanted them to see that there was a
24 level of separation between this and the company.

25 Q. Did Mr. Gibson or anyone else at

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1 Excelsior ever ask you why you had this entity

2 Randazza Legal Group?

3 A. No. We -- in fact, we just talked about
4 it. I mean, it was never really like sat down and
5 asked me, Why do you do this? It was like, Hey,
6 this seems like a better idea.

7 Q. I mean, did he ever ask you, upon looking
8 at this letterhead, for details about what
9 Randazza Legal Group was or who worked for it?

10 A. No. Because I think it -- I think the
11 letterhead speaks for itself. It had, at the
12 time, these five lawyers.

13 Q. So would you characterize the stance you
14 took against Mr. Krueger at Mr. Gibson's request
15 as aggressive?

16 A. Well, initially, no, because initially I
17 believe our agreement with him was going to be
18 that he would, you know, not do it again, I think.
19 And this -- you know, this is quite a few years
20 ago, but I think we had an agreement with him that
21 he would sign a settlement agreement that he had
22 paid a certain amount of money, or that he would
23 stipulate to a judgment that we would refrain from
24 collecting as long as he adhered to other
25 conditions.

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1 Q. All right. Would you please now look at
2 Exhibit 35?

3 A. Yes, I see it.

4 Q. And let me know when you are ready to
5 answer questions about it.

6 A. I can answer questions about it now.

7 Q. First of all, I see that there's the same
8 time stamp discrepancy on this one where there
9 seems to be an e-mail from Mr. Dunlap coming
10 before your e-mail.

11 Do you see that?

12 A. Okay. So on the first page, you are
13 saying that this comes at 2:28 p.m.?

14 Q. The one from you. And then if you look
15 at the top of the page, the response from
16 Mr. Dunlap comes at 11:31?

17 A. Yes.

18 Q. Do you see that?

19 A. Yes.

20 Q. Have you noticed that on many of the
21 e-mails that you've printed out?

22 A. Yes.

23 Q. Now, when you printed them out, were they
24 from -- for production in this case, were they
25 from Excelsior's server?

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1 A. No. I had -- I had these e-mails saved
2 on my own server, but only up until spring of
3 2012. And then some -- some setting on the e-mail
4 servers at Excelsior changed, and I couldn't -- I
5 couldn't download them anymore. I could only use
6 them on the Web mail client.

7 Q. All right. Let me ask you a question
8 about this e-mail exchange with Mr. Dunlap.

9 What position did Mr. Dunlap have in the
10 company?

11 A. Chief operating officer.

12 Q. All right. The last sentence in his
13 e-mail at the top of the page says, Perhaps a link
14 to some Justin Krueger coverage to put the fear of
15 God into him.

16 A. Uh-huh, yes.

17 Q. Can you explain the significance of that
18 as you understood it?

19 A. Well, we were being very aggressive
20 towards Justin Krueger as, you know, somebody to
21 make an example of. You know, we didn't want to
22 make an example of everybody. But when we picked
23 somebody to make an example of, that was
24 frequently a psychological warfare method that we
25 used. Send -- send our prior judgments that were

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1 usually reported on in the adult media to them,
2 and say, If you don't want to -- don't want this
3 to be you, you'll do as we say.

4 Q. Did Mr. Krueger become something of a
5 catch phrase about how hard to go after somebody?

6 A. Yes.

7 Q. Would you please turn to Exhibit 40 next?

8 A. Yes.

9 Q. And let me know when you are ready to
10 answer questions about it.

11 A. I'm ready to answer questions about it.

12 Q. I don't need you to do too much on this,
13 but can you tell me generally what you were
14 talking about with the Excelsior team in this
15 e-mail?

16 A. I think this was -- this was a podcast
17 by -- this was regarding a podcast by a gentleman
18 by the name of Mike Hancock. And Mike was a
19 smalltime podcaster who -- I don't remember a
20 whole lot about him, but I do remember he did a
21 portion on Justin Krueger, otherwise known in the
22 industry as Jake Lyons. That was his stage name.

23 Q. And did that podcast cause any
24 consternation --

25 A. Yes.

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1 Q. -- from --

2 A. Yeah. People were upset because, you
3 know, Krueger was -- Krueger is a little bit
4 crazy. You know, he would -- I don't remember if
5 it was in this podcast or something else, but he
6 claimed that we had -- we had sent people, in
7 effect, I think it might have even been me that
8 allegedly broke into his house with a crowbar in
9 order to steal information to be used to the
10 prosecution of claims against him.

11 Q. In the top of Exhibit 40 in your e-mail
12 exchange with Mr. Gibson, there is a sentence, We
13 should spend every last penny going after him. We
14 must end this injustice. Full speed ahead.

15 A. Right.

16 Q. Again, is that sort of language
17 consistent with what you would get from Mr. Gibson
18 instructing you on stances to take in litigation?

19 A. I would say it's at the top end of over
20 the top for him, but it wasn't -- it wasn't
21 inconsistent. But I don't think we actually wound
22 up going after this guy, though, because we had
23 a -- you know, had a bit of a -- bit of an issue
24 with that.

25 Q. Now, was it just Mr. Gibson himself who

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1 was urging aggressiveness and use of the media, or
2 did other members of the Excelsior team do so, as
3 well?

4 A. Oh, no. The whole team was very in favor
5 of doing that.

6 Q. Would you look at Exhibit 45, please?

7 A. Okay.

8 Q. And let me know when you have it and are
9 ready to answer a question about it.

10 A. I have it, and I'm ready.

11 MR. WHITE: Also wait for His Honor, too.

12 ARBITRATOR HABERFELD: Ready.

13 BY MR. WHITE:

14 Q. So this is an e-mail from Mr. Dunlap to
15 Mr. Gibson and you, correct?

16 A. It is.

17 Q. What is he talking about in general? Do
18 you recall the circumstances?

19 A. Yeah, I do. This was -- I don't remember
20 exactly which case this was, but Corbin Fisher, in
21 general, saw itself as a leader in the adult
22 entertainment industry's fight against piracy.

23 So part of the PR strategy was to show
24 people that, and possibly to shame other companies
25 into pulling their weight, as well. But, also,

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1 to, you know, make sure that people knew that if
2 you stole from us, that that was going to result
3 in consequences.

4 MR. WHITE: Your Honor, it's 10:15. May
5 I request a brief break?

6 ARBITRATOR HABERFELD: Sure. How long
7 would you like?

8 MR. WHITE: I would only need ten
9 minutes, but whatever.

10 ARBITRATOR HABERFELD: Off the record.

11 (Whereupon, a recess was taken.)

12 ARBITRATOR HABERFELD: Back on the
13 record.

14 Mr. White?

15 MR. WHITE: Thank you, Your Honor.

16 BY MR. WHITE:

17 Q. Mr. Randazza, what types of different
18 lawsuits did you file to vindicate Liberty's
19 intellectual properties? Are there sort of types
20 of classifications of defendants?

21 A. Yes.

22 Q. And why don't you tell me the first one
23 that comes to mind?

24 A. There were a lot of BitTorrent users.

25 ARBITRATOR HABERFELD: Is the court

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1 reporter, is she familiar with this as you say
2 that?

3 THE WITNESS: I think so.

4 THE COURT REPORTER: Yeah.

5 ARBITRATOR HABERFELD: Okay. Very good.

6 MS. KRINCEK: She did all the depositions
7 in the case.

8 ARBITRATOR HABERFELD: Very good. I
9 didn't know. I just thought to ask.

10 MR. WHITE: Would you -- Your Honor,
11 would you like a brief explanation of BitTorrent?

12 ARBITRATOR HABERFELD: If it is relevant
13 to our case.

14 BY MR. WHITE:

15 Q. Can you briefly tell us what BitTorrent
16 is in terms of who you would be suing in
17 BitTorrent situations?

18 A. Sure. BitTorrent is actually a really
19 neat technology, Your Honor. It's a -- if you
20 have an Internet connection, you usually have the
21 ability to download stuff a lot faster than you
22 can upload it. So let's say you have an Internet
23 connection of 50 megabits per second and that's
24 what, say, Comcast tells you that you've got.

25 It is really a little bit of a fib

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1 because you've got 50 download, but only five
2 upload. So, really, if you and I want to
3 communicate, we're only able to do this at five
4 megabits per second.

5 But imagine if you got the same file from
6 ten different people all at the same time, just a
7 little bit of each from everybody, now everybody
8 can send five megabits per second at you, but
9 since it's ten people doing it, you are
10 downloading it at 50 megabits per second.

11 So it's really a way of transmitting
12 enormous files at a speed that your Internet
13 connection theoretically doesn't have the ability
14 to do. So it's really kind of cool. You know,
15 NASA uses it to transmit data about -- you know,
16 from space exploration, for example.

17 But then there is another use for it, and
18 that is if you want to illegally pirate movies, it
19 would take you a really long time if I just
20 e-mailed you a movie. But if you get it from,
21 say, a thousand different people all at the same
22 time, you can do it in possibly in minutes or even
23 seconds.

24 But in order to do this, everybody needs
25 to participate in what's known as a BitTorrent

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1 swarm. And that swarm is all the individual
2 people all across the country and often across the
3 world who have that particular movie, and not just
4 that particular movie, but that particular
5 hashtag. What happens is the movie, the first
6 person to upload it to make it available to the
7 swarm, they are the only one person that has it.
8 But as it metastasizes, it goes to more people,
9 and it can go faster. But it's always got to have
10 this kind of electronic DNA to it so everybody
11 knows we're getting the same piece of the same
12 file, that gets reassembled on your computer.

13 So all of these people participate in the
14 swarm, and each one of these individuals can only
15 communicate with each other based on their IP
16 address, which is essentially the address -- not
17 really an address. It's more like a phone number
18 to their individual Internet connection.

19 So you can -- you can trace them to that,
20 and then what you've got is you've at least got
21 the house that was part of this swarm. And then
22 when you download the movie, theoretically, you
23 now become part of the swarm. So you are the next
24 infringer, or in our cases, you are my next
25 defendant, if I can find your IP address.

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1 Q. So was piracy of Liberty's content over
2 BitTorrent a significant problem?

3 A. Huge. I remember at one point we
4 released a DVD, and I want to say that, you know,
5 we sold maybe a thousand copies of it. And we
6 just stopped looking when we found 100,000 pirated
7 version of it.

8 So, you know, you can imagine that for a
9 media company trying to sell movies, I mean,
10 imagine any other business in the world where you
11 have for every one you sell, you know, a thousand
12 people steal it. No other business -- no business
13 can sustain that.

14 Q. So did you at Excelsior go on campaign of
15 suing BitTorrent users to the extent you could?

16 A. We did. You know, this was actually a
17 strategy that the recording industry and the
18 motion industry had employed, and some adult
19 entertainment companies were doing it at the same
20 time. That really created a lot of tension, you
21 know, although I didn't feel that the
22 anti-torrenting narrative was accurate. It still
23 created a large crowd of people who would be very
24 negative about it.

25 You can imagine that if you have a

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1 thousand people getting sued for stealing -- you
2 know, stealing a Bob Dylan song, well, they are
3 going to get kind of upset about it. So the
4 recording industry took a public relations hit for
5 it, one that they ultimately decided wasn't worth
6 it because, you know, even if everybody steals
7 that one song, you can still license it to movies,
8 you can still license it to commercials. The
9 recording industry will persevere even if nobody
10 ever buys the song again.

11 So here I was looking at this and
12 thinking if I do this, I don't want to go into a
13 court and have, you know, a judge sitting there
14 saying, you know, You've got this essentially
15 no-warning lawsuit where all of a sudden, sure,
16 maybe this guy in Topeka, Kansas stole your movie,
17 but you are coming down on him under the Copyright
18 Act, where you have to file a Federal lawsuit
19 against them, which is a little unfortunate that
20 there's, you know, exclusive jurisdiction in
21 Federal Courts, but I didn't write the laws.

22 But I really wanted to have the optics of
23 it look good for any judge I was before, and I
24 wanted to make sure that we minimized the public
25 relations impact. So what we did is I came up

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1 with an idea that we would send out a press
2 release that we were about to do this, thinking
3 that it would, at least, be a response when
4 somebody says they did this without warning.

5 And what we did was we said, If you've
6 been stealing Corbin Fisher movies, you can
7 contact us, and we will sell you amnesty from one
8 of these lawsuits for a thousand dollars, thinking
9 that was pretty good, given that the statutory
10 minimum was 750 bucks, we're going 250 bucks over
11 that, and I -- I didn't really expect it to do
12 anything except be a nice exhibit when somebody
13 says that we're, you know -- or at least a nice
14 piece of public relations when somebody says we're
15 a bunch of meanies for doing this.

16 Q. How did it actually work?

17 A. I'm still to this day surprised. People
18 started mailing checks, so -- and I'm not
19 testifying to the exact number here, but I want to
20 say the first round, we got about \$20,000 in
21 checks and agreements from people.

22 Q. Did you then repeat the amnesty offer?

23 A. Yeah. I figured, Hey, let's try it
24 again. Let's up the number to \$2,500, and let's
25 say that we're going to extend it. And I thought

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1 maybe we would get three or four more. I think we
2 got about \$80,000 in that next round, which,
3 again, was making all of us feel a little giddy
4 because we had essentially embarked on a campaign
5 to stop BitTorrenting of our movies, but we hadn't
6 even so much as identified a defendant or sent a
7 demand letter, and we were already \$100,000 up.

8 Q. Did you eventually start suing
9 individuals by IP address --

10 A. Yes.

11 Q. -- for piracy?

12 A. Yes, we did. In fact, we did one more
13 round of the amnesty where we raised it to like
14 \$5,000, and then we got a few more bucks.

15 And then we started doing what's known as
16 John Doe lawsuits, where -- well, I had seen that
17 people were -- you know, some judges were
18 concerned about joinder issues, and defendants
19 were certainly raising joinder issues when you sue
20 John Doe 1 through 500. I limited them to periods
21 of time and essentially sued the BitTorrent swarm
22 as an unincorporated entity.

23 And then what you would do is you would
24 file this lawsuit, and then file a motion for
25 early discovery with the court, the court would

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1 universally grant them, and then we would send
2 subpoenas to the Internet service providers for
3 the identities of the people attached to those IP
4 addresses. We had the IP addresses. We just
5 needed the names in order to start talking to
6 them.

7 Q. Now, was this approach of suing
8 individuals for BitTorrent, would you characterize
9 it as popular in the press or in the community?

10 A. Oh, no, no. Everybody hates these,
11 except -- you know, and when I was going to go
12 down this road, I remember I sat down with Jason
13 and said, Look, this is an option for us. We can
14 probably scare people into not stealing movies as
15 much, and I said we can probably make, you know,
16 50 to \$100,000 on it, but, you know, you need to
17 understand there's going to be a little bit of a
18 PR hit. And I showed him what the recording
19 industry and other companies had dealt with.

20 Q. Did he ever express any hesitancy about
21 going forward with BitTorrent lawsuits?

22 A. No. He, you know, somewhat mocked my
23 concern about that. I wouldn't say
24 disrespectfully, but said that, you know, What the
25 hell do I care? These aren't -- I'm not really --

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1 you know, I explained people might get upset if
2 you are suing your fans. And his position was,
3 and I still support his position, was that they
4 are not our fans if they are stealing from us.
5 Our fans are the people who are paying for it.

6 Q. Let's take a look at an example. Could
7 you please look in the second volume that's been
8 put in front of you at Exhibit 52?

9 A. Yes.

10 Q. And while His Honor is finding it, I
11 would like you to just look at it until you are
12 familiar with what it is.

13 A. I am.

14 Q. This is an e-mail exchange. What is it
15 about, in general?

16 A. This is about a defendant Prin
17 Tippayagosai.

18 Q. Why don't you spell it for the reporter.

19 A. I'm sorry. Prin is P-r-i-n, Tipp is
20 T-i-p-p-a-y-a-g-o-s-a-i.

21 Q. And was this someone you identified to
22 someone involved in BitTorrent piracy?

23 A. Yes, yeah. You can see in this e-mail we
24 have his IP address, which is 99.129.3.214. We
25 have the exact movie that he was pirating and

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1 when, so we had a guy targeted.

2 Q. And I see at the top there is an exchange
3 between you and Mr. Gibson where you say, I
4 presume you want me to destroy this guy, and he
5 says, But of course.

6 Do you see that?

7 A. I do.

8 Q. Again, is that characteristic of the type
9 of level of aggression that he was asking for from
10 you?

11 A. Yes.

12 MS. KRINCEK: Just for the record, this
13 exhibit appears to have the same problem with the
14 time stamps of the e-mails, too. So I'm not even
15 sure that the e-mails are printed out in the
16 correct order.

17 BY MR. WHITE:

18 Q. So we talked about that. Tell me, what
19 are tube sites?

20 A. Well, if you are familiar with YouTube,
21 which if there is anybody in the Western
22 Hemisphere who isn't, you know -- I presume we all
23 know what that is. You can upload a movie of your
24 choice to the site if you sign up and have an
25 account with that site.

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1 Q. And were tube sites a piracy problem for
2 Excelsior and Liberty?

3 A. They were.

4 Q. And were tube sites a viable target for
5 lawsuits themselves?

6 A. They weren't really that good of a target
7 because in large part, you know, they -- they have
8 some very significant defenses. They have -- the
9 problem is the tube site is not the infringer.
10 The infringer is -- kind of like you couldn't sue
11 BitTorrent, you couldn't sue the company that
12 invented BitTorrent, because all BitTorrent did
13 was provide a tool. That's why we never went
14 after the BitTorrent foundation. It would have
15 been a disaster.

16 As far as tube sites go, they have a lot
17 of the same defenses, although they had some
18 vulnerabilities that I thought made them, at
19 least, a decent target for purposes of a -- you
20 know, what we refer to as a smash and grab suit.

21 So that, you know, if you want to hold a
22 tube site liable, you've got to show that they
23 were doing more than providing just the tube site.
24 They have to have some involvement in uploading
25 the video.

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1 So where YouTube doesn't do that, if
2 somebody uploads -- you know, I know that you can
3 get first run movies before they're even out in
4 theaters sometimes on YouTube, YouTube is not
5 liable for that. The individual uploader is.

6 Q. What would make a tube site something
7 that would make it a viable litigation target for
8 what you called as colorfully a smash and grab?

9 A. Well, I would still look at them, and,
10 you know, the uncertainty of litigation was
11 certainly enough to motivate some of them to make
12 a payment.

13 And so I would look at them and see, are
14 they -- you know, where are they based? Where is
15 their hosting company? Where is their domain name
16 registrar? If I have any indication of where
17 their money is, because all that can be in the
18 United States, but if their money is hidden under
19 a mattress in Kazakhstan, it isn't going to do us
20 much good.

21 So I would look at those, and then I
22 would kind of keep my finger on the pulse of what
23 rumors were about one being sold, because they did
24 tend to change hands on a regular basis. And a
25 good time to file a lawsuit against them, even on

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1 one that had very, you know, limited likelihood of
2 success was when they were about to go into a
3 sale. You hit them with a Complaint, they call
4 you up in a panic, how much can I give you to go
5 away, and, you know, you get 50 grand here, 20
6 grand there, and then next thing you know, you've
7 got some real money.

8 Q. Did you succeed in getting any money in
9 settlements from tube sites when you were doing
10 this on behalf of Liberty?

11 A. I did. You know, the average yield was
12 not all that good. It was -- you know, I think
13 there was -- you know, I think we got 20 grand
14 from one, 40 or 50 from another.

15 Q. Now, for the last, say, ten years, have
16 you followed IP lawsuits against tube sites?

17 A. Of course, yeah.

18 Q. Are you part of any organizations?

19 A. Yeah. I'm a member of the -- I don't
20 know if I'm still current, but I've been off and
21 on a member of the IP sections of all of my five
22 state Bars. I've been a member of the
23 International Trademark Association, which while
24 it is trademarks only, they still follow copyright
25 issues. I was an adjunct professor of copyright

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1 law, so I'm on a couple of list servers for
2 copyright lawyers and copyright professors. And
3 then, of course, everybody who see a copyright
4 case who I know tends to flood my inbox with
5 e-mails saying, Have you seen this?

6 MS. KRINCEK: Your Honor, I would just
7 object to this line of questioning. It sounds
8 like they are trying to qualify Mr. Randazza to
9 give expert testimony or legal conclusions
10 regarding litigation against tube sites, which
11 would be inappropriate for him to be testifying
12 about legal conclusions about the types of
13 defenses or merit of defenses available,
14 especially given that that's relevant -- his
15 advice to our clients on that topic is relevant to
16 this arbitration, and he would obviously have
17 reason to be biased in giving this testimony in
18 his opinions.

19 MR. WHITE: Your Honor, he's been accused
20 of improperly not advising certain suits. I'm
21 laying the foundation for why he didn't. And on
22 this, I'm only going to inquire another question
23 or two to follow up on that line of questioning.

24 ARBITRATOR HABERFELD: Okay. I reserve
25 the decision on the objection.

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1 BY MR. WHITE:

2 Q. Mr. Randazza, based on all that
3 following, are you -- have you ever seen any
4 successful lawsuit for copyright violation against
5 a tube site?

6 A. The only success -- the only ones that I
7 am aware of with all of that background of places
8 that I would know to look where there has actually
9 been a successful lawsuit against a tube site were
10 one that we filed in the District of Arizona where
11 the other party defaulted, and then there was
12 another where we were involved in a three-way
13 lawsuit involving IO Group, which is Titan Media,
14 Corbin Fisher, and Channel 1 Releasing.

15 We sued a trio of tube sites that had --
16 that we had direct evidence of them uploading the
17 materials themselves and then charging for
18 subscriptions. But we actually didn't win that
19 one on the merits. We won that on terminating
20 sanctions for discovery abuses.

21 And on neither of those cases did we
22 collect a dime. And I'm not aware of any -- any
23 lawsuit at all in the United States where a tube
24 site was successfully sued for copyright
25 infringement.

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1 ARBITRATOR HABERFELD: I'm ready to rule
2 on the objection. Overruled.

3 Next question, please.

4 BY MR. WHITE:

5 Q. Mr. Randazza, did Mr. Gibson ever give
6 you any instructions or guidelines about
7 litigation that would make prolonged litigation
8 difficult for you?

9 A. Yes.

10 Q. What was that?

11 A. Well, when I first started litigating
12 cases, I just presumed he knew that it would
13 eventually result in possible counterclaims,
14 discovery, depositions, having to open up the
15 company's books on certain issues. And he was
16 sort of upset about that, saying, Well -- I'm not
17 quoting him, but the general theme of the
18 conversation was, I didn't do anything wrong, why
19 should I have to open up my books? Why should
20 that have to happen? And I don't want to ever
21 have to sit for a deposition.

22 Q. Did you succeed in your litigation
23 campaign in preventing Mr. Gibson from ever having
24 to sit for deposition?

25 A. During my representation of the company,

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1 I do not recall us ever having to even so much as
2 provide responses to written discovery, much less
3 tolerate anybody having to sit for a deposition.

4 Q. Do you know about how much you brought in
5 through your campaign at the time you were at
6 Excelsior?

7 A. I want to say about \$2 million.

8 Q. Did Mr. Gibson ever complain to you that
9 the costs of litigation were getting too high?

10 A. He did complain in the Oron litigation
11 because of the local counsel fees, primarily.

12 Q. Well, let me ask this: Was his stance on
13 the comparison of cost to resolve consistent?

14 A. I wouldn't say so.

15 Q. Were there cases -- were there any cases
16 where you thought that what was going out was
17 disproportionate to what might come in?

18 A. No, not that I recall. There might have
19 been some -- you know, I know that we had
20 expensive local counsel fees in some cases, but,
21 you know, nothing that -- nothing that really came
22 up.

23 Q. How about the Krueger case, was that a
24 case where what you expected to get was consistent
25 with what you were putting into it?

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1 A. Well, no, because we -- you know, we
2 weren't laying out any outside counsel fees on
3 that. I was just putting a lot of my own time
4 into it. I didn't feel like it was really worth
5 it, because I didn't expect -- you know,
6 Mr. Krueger barely had, you know, anything to his
7 name. I knew no matter how big of a judgment we
8 got against him, we were very unlikely to collect
9 better than ten cents on the dollar.

10 Q. Did Mr. Gibson ever have you conduct
11 litigation against a former landlord?

12 A. Yes.

13 Q. And how was that in terms of what was put
14 in versus what you could get out?

15 A. I did complain about that because I felt
16 that -- again, I don't have the exact number in
17 front of me, but I want to say that there was a
18 security deposit that he failed to return to them,
19 so it was like a -- you know, I think it was
20 around \$3,000. And if I remember correctly, we
21 had perhaps the ability to collect attorney's fees
22 and an elevated amount on it, but it was -- I
23 don't know how much time I put into that, but it
24 was very disproportionate to what we could
25 possibly have collected from it, especially

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1 knowing that -- I think we ultimately discovered
2 after conducting some pretty hard-core
3 investigation that he had run away from a lot of
4 debts, declared bankruptcy, run away from a lot of
5 debts, and then was living on a small island off
6 the coast of Honduras where I was to be sent to
7 personally escort a process server to finally
8 serve him with this thing.

9 But kind of at the 11th hour, we figured
10 out that he had left that island, and we didn't
11 know where he was, so that can -- that trip got
12 canceled.

13 Q. Let me move to another subject area, and
14 that is the press and relationship with the press.

15 Can you tell me what XBIZ is?

16 A. XBIZ is a magazine that covers the adult
17 entertainment industry. You might consider it
18 sort of to be like, I don't know, Entertainment
19 Weekly for the porn industry. But it's a trade --
20 mostly just a trade publication. Adult
21 entertainment executives and the like would be
22 interested in it.

23 Q. Did you develop a relationship with XBIZ?

24 A. Yes.

25 Q. And how did that happen?

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1 A. I represented them.

2 Q. Was that through your -- privately?

3 A. It was.

4 Q. And was some of that representation while
5 you were at Excelsior?

6 A. Yes.

7 Q. Now, did you conceal from Excelsior that
8 you were doing work for XBIZ?

9 A. Anything but. I actually bragged about
10 it.

11 Q. What type of work were you doing for
12 them?

13 A. It was -- they would have me look at
14 contracts that they had with various vendors. I
15 think I did some trademark enforcement work for
16 them. I would respond -- I want to say they got a
17 demand letter or two from time to time that I
18 responded to. But, you know, some pretty mundane
19 work, actually.

20 Q. Did you perceive that you were getting
21 any benefits from Excelsior for doing the work for
22 XBIZ?

23 A. Well, you know, my work for XBIZ, I
24 didn't get paid for most of it. I agreed to do, I
25 think, up to \$2,500 worth of billable time per

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1 month for free. And, you know, they initially
2 proposed to me a whole package of promotional
3 considerations, you know, stuff that I really
4 didn't have any use for. I didn't want to insult
5 them, so I said, You know what, I'll just take a
6 little ad, and then, you know, I'll do all this
7 stuff for you for free. And --

8 Q. But did it offer any benefits for
9 Excelsior based on the relationship you
10 cultivated?

11 A. It most certainly did.

12 Q. What type?

13 A. Well, any time that they were considering
14 writing an article that could be perceived as
15 negative toward Corbin Fisher, they would call me
16 first, ask me how I felt about it, and give me an
17 opportunity to adjust the article. And that
18 happened -- as far as I know, there was never a
19 negative article about them while I was there, and
20 nor since.

21 Q. How receptive were they to positive news
22 or to press releases?

23 A. They would -- as I would tell the guys at
24 Corbin Fisher, they would print pretty much
25 anything I asked them to print, as long as I asked

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1 nicely. And that was, I felt, a really good coup,
2 because, you know, we get a big judgment against
3 somebody and they publish it, then the next demand
4 letter comes with a link to that article saying,
5 As you might see, we just got a huge judgment
6 against somebody similarly situated to you.

7 Q. Did they ever give any awards to
8 Excelsior?

9 A. Yes. In 2010 or '11, I can't put my
10 finger on exactly which one, they -- they really
11 got an unprecedented award as Gay Site of the
12 Year. And I say it's unprecedented because while
13 I wouldn't say that the XBIZ awards are rigged, I
14 would certainly say that how much advertising
15 space you buy tends to weigh in your favor as to
16 whether you are looked upon favorably by the
17 judges. And at that point, I don't believe -- in
18 fact, I'm virtually certain that Corbin Fisher had
19 either never bought an ad or never bought an ad
20 while I was there.

21 Q. Did you present -- did you inform
22 Mr. Gibson about winning the award?

23 A. I did. I told him that we needed to put
24 together a presentation, and we sent them our
25 candidacy presentation, and it was -- I know it

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1 got to the top of the pile.

2 Q. What happened when you won the award?

3 How did Mr. Gibson react?

4 A. Well, he was -- it was mixed feelings,
5 because I know -- you know, I might be conflating
6 this with the Free Speech Coalition award.

7 But there was some -- one award that he
8 got that I put in a good word for. It was either
9 FSC or XBIZ. And I know that it was partially
10 sponsored by a company called Cybersocket.
11 Cybersocket is another industry trade. They are
12 more of like an advertising directory.

13 When the award came, it had Cybersocket's
14 name on it as a sponsoring party. And Jason
15 instructed me to call up the Free Speech Coalition
16 and inform them that they were rejecting the
17 award, and that they could place it in an
18 anatomically uncomfortable place.

19 Q. Now, you heard -- or you've seen expert
20 reports in this case about an e-mail you sent that
21 caused some controversy calling someone a "little
22 shit."

23 Do you recall that controversy?

24 A. I believe the direct quote was "thieving
25 little shit."

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1 Q. Okay. Thank you for that.

2 Did XBIZ report on that controversy?

3 A. No.

4 Q. Did the other adult press report on it?

5 A. No. The only other adult press that I
6 would say there is is AVN, with whom I also had a
7 relationship, although not an attorney/client
8 relationship, and YNOT. And YNOT is probably the
9 third largest adult industry publication. And
10 none of them published on this.

11 Q. Was it something that was elsewhere on
12 blogs or published?

13 A. Yes, it was.

14 Q. Now, did Mr. Gibson ever ask you if you
15 could cultivate similar relationships with other
16 companies?

17 A. He did ask me at one point, you know, why
18 I didn't have AVN in my pocket, too. I assured
19 him that we had a friendly relationship with them,
20 but since they were represented by a friend of
21 mine, I wasn't going to actively try to poach
22 them.

23 Q. Did he ever -- did Mr. Gibson or the rest
24 of the team ever express concern that you were
25 getting too much into XBIZ, or they were covering

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1 Excelsior too closely?

2 A. On the contrary. Usually, you know, a
3 pat on the back and congratulations when we would
4 get things into XBIZ, or even the other media
5 sources.

6 Q. Was that both verbally and in writing?

7 A. Yes.

8 Q. Let's take a look at an example. Would
9 you please look at Exhibit 29?

10 A. I see it.

11 Q. And I'm going to have --

12 ARBITRATOR HABERFELD: One moment.

13 BY MR. WHITE:

14 Q. -- you look at 29 at the last --

15 ARBITRATOR HABERFELD: I have it.

16 BY MR. WHITE:

17 Q. -- two pages, showing the last -- the
18 initial portion of this e-mail.

19 A. Uh-huh.

20 Q. And let me know when you are ready to
21 answer questions.

22 A. Okay.

23 Q. Is that from Mr. Gibson to most of the
24 team at Excelsior?

25 A. Yeah. This is actually a -- it all

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1 started -- this all started with a San Diego City
2 Beat article. And I cultivated a relationship
3 with a journalist who wrote for City Beat.

4 And you can see the title of it was Fly
5 Meet Sledgehammer, and I think it was
6 discussing -- I want to say it was discussing some
7 of our litigation there.

8 Q. And was his comment, Nicely done, Marc,
9 is that fairly characteristic of the sort of
10 communications he would send you about press
11 coverage?

12 A. Yes. And then I had more good press. I
13 don't know what this -- what this article was at
14 the top, the XBIZ one, but I think it was
15 involving that case that we got the default
16 judgment because of discovery abuses, because GLBT
17 was the name of the corporation we sued.

18 Q. Now, did Mr. Gibson express strong
19 feelings about controlling press coverage -- or,
20 excuse me -- controlling the message coming out of
21 Liberty and Excelsior?

22 A. Not at first. He seemed pretty happy
23 about the way it was going, because it -- it lived
24 up to the goal here of Let's, you know, shoot one
25 to frighten a thousand.

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1 Q. But did there come a time when he started
2 being very explicit that he wanted to review all
3 press releases?

4 A. Yeah. I want to say it was sometime
5 in -- sometime in 2012, but I'm not -- I don't
6 remember exactly. I remember there was one
7 communication in particular where I made a
8 judgment call to send out a release because Jason
9 was on an eight-hour flight, and I thought, you
10 know, we wanted to get that out that day, because,
11 you know, press is not real good if you get it
12 out, say, on a Friday. You want to get bad news
13 out on a Friday, good news out on a Tuesday or a
14 Wednesday.

15 Q. So would you please take a look at
16 Exhibit 51, which is in the second volume?

17 A. Okay.

18 Q. And let me know when you've had a chance
19 to take a look at it.

20 A. I have it.

21 Q. Is that an exchange between you and
22 Mr. Gibson about the press release?

23 A. Well, I'm copied on it.

24 Q. Right. Who initiated the press release,
25 according to it?

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1 A. It looks like Chip Carter did.

2 Q. And who was he?

3 A. He was the director of marketing.

4 Q. And was this consistent with the way,
5 after a certain point, Mr. Gibson started
6 responding of people-issued press releases without
7 his input?

8 A. If it was anybody except -- I think Brian
9 Dunlap and I had a little more latitude, but Chip
10 certainly didn't.

11 Q. And so he says, Do not send these out
12 again without my express written approval. That's
13 about the middle of the first page.

14 Is that a message he sent on multiple
15 occasions?

16 A. Yes.

17 Q. Would you look at 57 in the same binder,
18 please?

19 A. Okay. Yes, I have it.

20 Q. And let me know when you've looked at a
21 couple pages of it and you are ready to answer
22 questions about it.

23 A. I'm ready. I remember this one.

24 Q. All right. Is this the one you talked
25 about where he was on a plane?

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1 A. Yes.

2 Q. And in this exchange, is it fair to say
3 you apologized for it being going out without his
4 say-so?

5 A. Yes. In fact, I remember -- I'm pretty
6 sure Chip didn't want to send it out because he
7 didn't get express written approval from Jason.
8 But I made the call as the company's general
9 counsel that it would go out and I would take
10 responsibility for it.

11 Q. Would you look at the last page of that
12 exhibit, please --

13 A. Okay.

14 Q. -- showing the press release?

15 A. Yes.

16 Q. And the paragraph that's at the top of
17 that last page.

18 A. Uh-huh.

19 Q. There's a quote from someone at a company
20 called PornGuardian.

21 What was PornGuardian?

22 A. PornGuardian is a company that provides
23 takedown services. See, under the Digital
24 Millennium Copyright Act, under Section 512 of
25 Title 17, Web host providers, hosting companies,

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1 tube sites, and the like, if you send them a
2 notice to take down something that is infringing,
3 then that will -- they are supposed to take it
4 down right away. And if they do, then they are
5 completely immune from liability. Although even
6 if they don't, you still have to get through the
7 secondary liability thicket.

8 So they did -- PornGuardian, in large
9 part, provided DMCA takedown services where they
10 would just generate thousands of these takedown
11 requests per day on behalf of their clients.

12 But they also had a couple of really
13 savvy computer techs there who would do -- who
14 would do a lot of research on piracy companies. I
15 think if anybody hated porn piracy more than
16 Jason, I would say it would be these guys.

17 Q. Now, this quote here that I drew your
18 attention to, saying, The entire industry owes its
19 thanks to Corbin Fisher for leading the charge,
20 from PornGuardian.

21 A. Yes.

22 Q. It's fairly glowing. Do you know how you
23 got -- or how it was that PornGuardian gave
24 Excelsior such a good quote on this?

25 A. I wrote that. And I called up Peter

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1 Phinney at PornGuardian, and I asked him if I
2 could put those words into his mouth in the press
3 release.

4 Q. And did you have a relationship with
5 PornGuardian, a legal relationship at this time?

6 A. I did, yes. I'm not sure how formal it
7 was, but I did provide them legal advice on a
8 pretty regular basis, usually for free. When I
9 charged them, it was at a steeply discounted rate.

10 Q. Do you think that relationship -- did
11 you -- was there an understanding between you that
12 that relationship was what gave you access to
13 request a viable quote like that?

14 A. Yes, of course.

15 Q. When you communicated with Mr. Gibson,
16 was it usually in person or writing?

17 A. It was a myriad of ways. It would be in
18 person, text message, e-mails. But, you know,
19 when he was in San Diego, before he moved out to
20 Las Vegas, we would spend an awful lot of time
21 together, you know, in the car, at dinner, his
22 office. So most of my communications when he was
23 around were verbal, most of my communications when
24 he wasn't were text message or e-mail.

25 Q. Now, through the time you worked for

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1 Excelsior and then Liberty, were you tasked to do
2 personal work for Mr. Gibson or other executives?

3 A. I was.

4 Q. What types of personal work? For
5 instance, were you tasked to do any in connection
6 with firearms?

7 A. Yes.

8 Q. What kind of work?

9 A. I was working on getting all of the
10 executives their concealed carry permits here in
11 Nevada.

12 Q. Did you also give advice about a
13 concealed carry permit for a performer, Mr.
14 McCoig?

15 A. I believe I did, because he had a -- he
16 might have had some legal trouble in the past that
17 could have impacted that.

18 I'd also get kind of weird text messages
19 from Jason from time to time with a compass
20 coordinate saying, Can I shoot my gun here?

21 Q. Did you ever give him advice about
22 firearm use and what was legal and what wasn't?

23 A. I did.

24 Q. Did you ever take care of legal business
25 for him in other states?

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1 A. I did.

2 Q. How about a name change, did you do any
3 name change work for him?

4 A. Yes. I worked on a file where he wanted
5 to delete his middle name from his legal name.

6 Q. Did you work any personal lease disputes
7 for him?

8 A. That one where we went after the former
9 landlord. But that lease was in -- the one that
10 went and hid in Honduras. But I want to say that
11 that lease was in Mr. Rasmus' and Mr. Lowderman's
12 name, though, but it was Jason that tasked me with
13 it.

14 MS. KRINCEK: Your Honor, I would just
15 object to this line of questioning because
16 Mr. Randazza is obviously discussing
17 attorney/client privileged information about
18 matters he handled personally for Mr. Gibson.

19 We're not disputing that he handled some
20 personal matters for Mr. Gibson in this case, so
21 it's unnecessary to get into the details of that,
22 and for him to -- Mr. Randazza to break the
23 attorney/client privilege.

24 MR. WHITE: I would say that by raising a
25 claim against Mr. Randazza, including that he was

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1 spending time on things he shouldn't have been
2 spending time on, that that privilege has been
3 waived. However, I will not go any further into
4 any of the details of any of those items. I only
5 have one other matter to mention in which
6 Mr. Gibson, or no one here, was a direct client.

7 ARBITRATOR HABERFELD: Anything further
8 on your objection?

9 MS. KRINCEK: I don't know why he needs
10 to ask any more questions about whether he handled
11 personal matters for Mr. Gibson. Like I said --

12 ARBITRATOR HABERFELD: Let's go off the
13 record.

14 (Whereupon, an off-record
15 discussion was had.)

16 ARBITRATOR HABERFELD: Go back on the
17 record.

18 BY MR. WHITE:

19 Q. Mr. Randazza, who is Abel Petrescu,
20 that's P-e-t-r-e-s-c-u?

21 A. Abel was a -- was or probably still is a
22 performer for Corbin Fisher, as well as a personal
23 friend of Jason's.

24 Q. And did Mr. Gibson ever ask you to do any
25 legal work for him?

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1 A. He did.

2 Q. And generally what was the nature of it?

3 A. He had a dispute with his former
4 girlfriend.

5 Q. And when you were doing these things that
6 we've just been talking about, were you billing
7 anyone separately through Excelsior, or was this
8 things that you were doing on company time?

9 A. Usually I tracked it as company time.

10 Q. Okay.

11 A. In fact, I don't recall tracking it any
12 other way.

13 Q. As you built a friendship with
14 Mr. Gibson, would you and he discuss personal
15 relationships?

16 A. Yes.

17 Q. And would that include the personal
18 relationships that Mr. Gibson had with people at
19 the company?

20 A. Yes.

21 Q. Would Mr. Gibson talk about having
22 personal sexual relationships with independent
23 contractors of the company?

24 A. Yes.

25 Q. Now, you mentioned someone named Andrew

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1 Rasmus before.

2 Do you recall that?

3 A. I do.

4 Q. And who was he?

5 A. When I joined the company, he was an
6 executive and part owner of the company.

7 Q. How did he start with the company, under
8 your understanding?

9 A. He was a performer that Jason had a
10 personal relationship with.

11 Q. Did Mr. Gibson ever say anything to you
12 about how Mr. Rasmus got a share in the company?

13 A. Yes.

14 Q. What did he say to you?

15 A. That it was -- he was to live with Jason
16 for -- have a relationship with him for three
17 years, and then at the end of those three years,
18 six and seven-eighths of the company would vest as
19 Andrew's property.

20 Q. Did Mr. Gibson ever enlist you to help
21 him deal with relationship issues and problems?

22 A. He did.

23 Q. Who is Jon Price?

24 A. Jon Price is a performer who Jason had a
25 relationship with after, maybe even consecutively

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1 with Andrew.

2 Q. And was the nature of the assistance he
3 asked you for in connection with Mr. Price?

4 ARBITRATOR HABERFELD: You said
5 consecutively. Did you mean consecutively?

6 Let's have this answer read back.

7 (Whereupon, the pertinent part of the record
8 was read back by the court reporter.)

9 THE WITNESS: Yeah.

10 ARBITRATOR HABERFELD: Did you mean
11 consecutively or concurrently?

12 THE WITNESS: I'm sorry. Concurrently,
13 yeah. There was either a little -- there was
14 either a little overlap there, or it was one right
15 after the other.

16 ARBITRATOR HABERFELD: All right. Thank
17 you.

18 BY MR. WHITE:

19 Q. So were you asked to help him with
20 respect to Jon Price somewhat?

21 A. Yes.

22 Q. How?

23 A. The morning after Jason's birthday in
24 2012, I got a call very early in the morning to
25 come over to Jason's house to help him deal with a

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1 situation involving Jon. Jon apparently --
2 according to Jason, Jon attacked Jason. According
3 to Jon, Jason attacked Jon.

4 Q. And were you tasked to do something?

5 A. Yes.

6 Q. What was that?

7 A. To get Jon out of the house and to the
8 airport and on a plane and out of Las Vegas.

9 Q. And did you do that?

10 A. I did.

11 Q. Did you do that by personally
12 communicating with Mr. Price?

13 A. Yes. I talked to Jon, I followed him
14 around the house as he packed his belongings. I
15 had Jason wait as far away as possible because I
16 didn't want to have any repeat of that. And I
17 called a cab for Jon. And I don't know if I
18 personally booked the plane ticket or not. I
19 think I might have. And then I told him to go to
20 the airport, and that his 702 area code privileges
21 had been revoked.

22 Q. Was Jon then any sort of -- in addition
23 to being a performer, did he have any other role
24 at the company?

25 A. He did.

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1 MS. KRINCEK: Your Honor, I'm going to
2 object to this line of questioning. I mean,
3 Mr. Gibson was assaulted, and that personal
4 incident and relationship has zero relevancy to
5 the claims in this case. I don't know why we're
6 even going into this subject area, especially in
7 detail.

8 MR. WHITE: Your Honor, I'm very near
9 done with it, other than one other question about
10 Mr. Price's role in the company. And the
11 relevance is that --

12 ARBITRATOR HABERFELD: Are you going to
13 connect up the relevance?

14 MR. WHITE: Yes, I will.

15 ARBITRATOR HABERFELD: Or do you want
16 to --

17 MR. WHITE: It will be a shift in
18 Mr. Gibson's attitude at about this time. In
19 addition --

20 ARBITRATOR HABERFELD: A shift in
21 attitude, more specifically?

22 MR. WHITE: Mr. Gibson's attitude towards
23 Mr. Randazza.

24 ARBITRATOR HABERFELD: Okay. As long as
25 you make that connection.

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1 BY MR. WHITE:

2 Q. Did Mr. Price get his position with
3 Excelsior, a non-performer position before or
4 after he was in a relationship with Mr. Gibson?

5 A. After.

6 Q. And what type of position did he get?

7 A. Jason actually asked -- I think Jason
8 asked all of the executives if -- and said he was
9 going to hire Jon to do something, and asked all
10 of us if we needed him in our respective
11 departments. I volunteered to take him on in my
12 department as a -- you know, as an entry-level
13 person.

14 Q. Mr. Randazza, I'm now going to shift to
15 another area. Next area on the list that I gave
16 you, the point in time in which your relationship
17 with Mr. Gibson at Excelsior soured.

18 A. Okay.

19 Q. About when would you say it was that
20 there was a change in tone of the relationship?

21 A. I began to notice it spring of 2012.

22 Q. Were there any things that were happening
23 that you were observing about the time that the
24 attitude started to change?

25 A. Well, that was when -- that was about

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1 when his -- when his deal with Mr. Rasmus began to
2 vest, I guess you could put it. And while -- you
3 know, while Andrew had dated women throughout all
4 the time that they were together, Andrew started
5 dating one woman on a regular basis rather than
6 just, you know, one or two-day flings.

7 Q. Did Mr. Gibson express upsetness about
8 this to you?

9 A. Yes.

10 Q. I apologize for "upsetness." That's a
11 terrible word.

12 A. I know what you meant.

13 Q. Did it also coincide with the incident
14 with Mr. Price?

15 A. I can't honestly place one with the other
16 in an accurate timeline.

17 Q. Now, what was the first thing that showed
18 you that something was wrong in your relationship?
19 Was there a particular incident that really drove
20 it home?

21 A. Yes.

22 Q. And what was that?

23 A. When Jason decided to shoot a porn scene
24 on my desk in my office.

25 Q. Now, prior to this, did Mr. Gibson ever

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1 talk about whether or not your office should be
2 secure and locked?

3 A. Yes. In fact, it was almost -- it was
4 almost an irritant that people weren't able to go
5 in and out of my office. I think he expressed
6 even irritation that my paralegal could go in and
7 out of my office without any control. And I
8 argued with him a bit saying, you know, I'm not
9 really sure how I can function if the paralegal
10 can't be trusted.

11 Q. Did he express why he thought the office
12 should be kept so secure?

13 A. Yes. It was his lawyer's office. It was
14 full of all kinds of confidential legal
15 information, all kinds of confidential legal
16 files.

17 Q. All right. I'm going to ask you to look
18 at Exhibit 27, please. That's in the first
19 binder.

20 Would you look at the first page, and at
21 the text that's at the bottom of the page, and let
22 me know when you are ready to talk about it?

23 A. Okay. Is it the -- what number is next
24 to it?

25 Q. 23605. It's at the bottom of the first

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1 page of Exhibit 27.

2 A. Yes, I see it.

3 Q. There's a text to you?

4 A. Uh-huh.

5 Q. First of all, are these text messages

6 between you and Mr. Gibson during this time

7 period?

8 A. They appear to be.

9 Q. So this is in April 2012?

10 A. Yes.

11 Q. There is a text from Mr. Gibson to you

12 saying, I'm shooting gay porn on your office desk

13 and couch.

14 A. Yes.

15 Q. Do you see that?

16 A. Yes.

17 Q. Did you think that was true?

18 A. No.

19 Q. What did you think it was?

20 A. Jason being irreverent, and, you know,

21 just making a joke.

22 Q. Is that the sort of thing that people

23 would occasionally --

24 A. Sorry.

25 Q. -- joke about at the company?

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1 A. Yeah. I think at one point somebody had
2 said that -- while I was away one time, they had
3 turned my office into a sex dungeon.

4 Q. Let me ask you to look briefly, to turn
5 to Exhibit 37.

6 A. Okay. Yeah, there it is.

7 Q. Is that the e-mail you were talking about
8 where someone joked about turning your office into
9 a dungeon?

10 A. Yes.

11 Q. Did they actually do that?

12 A. Of course not, no.

13 Q. So would there be anything unusual about
14 Mr. Gibson joking about something like this, as
15 opposed to being literal?

16 A. No. Jason often sent, you know,
17 irreverent jokes to me. Like I remember one
18 morning he sent a text to me that really upset me
19 saying that he had AIDS. And I ran over to his
20 house kind of upset, and said, What are you
21 talking about? And he said, Oh, I'm just kidding.
22 I remember getting pretty upset with him over
23 that.

24 Q. Let's turn back to Exhibit 27, please,
25 and go to the second page of it.

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1 A. Okay.

2 Q. So you respond, Don't get jizz on my
3 briefs?

4 A. Yes.

5 Q. In doing that, are you thinking that this
6 is a conversation about something that's really
7 happening?

8 A. No. I mean, I think -- I don't think
9 there's a single person with a JD degree that
10 hasn't made some irreverent crack about, you know,
11 Your Honor, can I show you my briefs, or something
12 like that, all those silly amongst lawyer jokes.

13 Q. The next one from Mr. Gibson is about
14 Olivia squirted all over your desk and floor.
15 Sharon won't have time to clean it.

16 And you respond, I don't want it cleaned
17 up.

18 A. Yes.

19 Q. Again, is this something that you thought
20 you were talking about something really happening?

21 A. I mean, I very much -- I mean, no, not at
22 all. Come on, Jason is telling me that -- even if
23 this had happened, the cleaning lady won't have
24 time to clean it up until the end of next week?

25 Q. And you say, I don't want it cleaned up.

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1 Are you joking still?

2 A. Of course. I'm playing along with him.

3 Q. In the next one he says, Jennifer's Bush
4 is going to be very famous.

5 Who is Jennifer?

6 A. My wife.

7 Q. Did you understand what that joke was
8 about?

9 A. Not at the time.

10 Q. And then he goes on -- the rest of that
11 page, he's asking you about someone with a DWI
12 getting a concealed carry permit, and he's asking
13 about a David.

14 Do you see that?

15 A. Yes. It's David McCoig.

16 Q. And did David McCoig at that time have a
17 personal relationship with Mr. Gibson?

18 A. Yes.

19 Q. Was he also someone who started as a
20 performer with the company?

21 A. Yes, but he wound up getting hired as an
22 employee by the company.

23 Q. I would like you now to turn to the page
24 where the Bates stamp at the bottom says 462, it
25 says EMC000462.

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1 A. Okay. My attention is there.

2 Q. And looking at the last text on the page;
3 do you see it?

4 A. Yes.

5 Q. You say, I thought you were joking about
6 shooting in here.

7 A. Yes.

8 Q. Does that mark the time when you realized
9 it wasn't a joke?

10 A. Yes.

11 Q. Let's talk about how you found out. How
12 did you find out that a scene actually had been
13 shot in your office?

14 A. Well, I walked into the office, and a
15 couple of employees were chuckling, and one of
16 them said, Hey, how does your desk smell?

17 Q. Did you get more comments like that to
18 you over the next couple of days?

19 A. No. Just -- just that day as I walked
20 through the break area and into the executive
21 wing.

22 Q. Did you get more than one comment?

23 A. Yes.

24 Q. Were these -- who were these people
25 making the comments?

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1 A. I only remember one being Cameron Frost.
2 I don't remember the others, but it was sort of
3 a -- you know, everybody sort of laughing about it
4 as I walked in.

5 Q. All right. I'm going to ask you to go to
6 Exhibit 23 in the binder before you.

7 A. You know, even at that time, I didn't --
8 it didn't really ring to me that it had happened.

9 Q. Well, this is a series of pictures.

10 A. Yeah.

11 Q. Do you recognize your office in the
12 pictures?

13 A. I do.

14 Q. And this one depicts two men having sex.

15 A. Uh-huh.

16 Q. Did you see these pictures at the time?

17 A. No.

18 Q. Have you reviewed the films that are
19 Exhibits 24 and 25 that have been submitted?

20 A. Yes.

21 Q. And that have also been submitted by the
22 respondents?

23 A. Yes.

24 Q. Do you recognize your office in those?

25 A. I do.

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1 Q. Please turn to Exhibit 25.

2 A. Okay. It just says a video clip.

3 Q. I'm sorry. That should be Exhibit 26. I
4 apologize.

5 A. Okay.

6 Q. Is this a series of outtakes from those
7 films?

8 A. Yes, it is.

9 Q. In the first picture, is that your
10 office?

11 A. It is my office.

12 Q. There's a framed picture in the upper
13 left corner.

14 Do you see it?

15 A. Yes.

16 Q. What is that?

17 A. That is a painting that my wife did for
18 me.

19 Q. Who is it of?

20 A. It's of George Bush characterized as a
21 character in George Orwell's 1984.

22 Q. Did you later come to think that that had
23 something to do with what Mr. Gibson said about
24 your wife's Bush?

25 A. Yeah, and then it all sort of fell into

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1 place when I walked in.

2 Q. Looking at the second frame in this
3 exhibit, is that your desk?

4 A. Yes.

5 Q. And the third frame, is that also your
6 desk?

7 A. Yes.

8 Q. Do those appear to you to be fluids on
9 the desk?

10 A. They do.

11 Q. Please turn to the next frame, which has
12 a tie on the monitor there.

13 A. Uh-huh.

14 Q. Whose tie is that?

15 A. That was mine. It was a gift from my
16 wife.

17 Q. Looking behind the tie, there are also
18 some pictures visible in this.

19 Can you tell me what those are?

20 A. Can you find out what team everybody
21 roots for -- the judge roots for before I do?

22 Q. Take the risk.

23 A. The first two on the left are the front
24 pages from the Houston Chronicle and the Boston
25 Globe when the Patriots won the Super Bowl --

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1 Super Bowl in New Orleans, the first one. And
2 then the one in Houston against Carolina. And
3 then the third one is a reproduction of the front
4 page of the Boston Globe from when they won their
5 World Series in 2004.

6 Q. Are these things that the company
7 provided, or are those personal items?

8 A. No, those are personal religious items.

9 Q. There's a --

10 MR. WHITE: Facetious, or --

11 THE WITNESS: I am from Boston, Your
12 Honor.

13 ARBITRATOR HABERFELD: Okay.

14 BY MR. WHITE:

15 Q. There is also a legal -- what appears to
16 be a legal book on the desk.

17 Do you see that?

18 A. I do.

19 Q. Do you recognize that as one of the books
20 you used in your representation there?

21 A. Yes.

22 Q. Turning to the next slide, the woman is
23 pulling on a tie around a man's neck.

24 Do you see that?

25 A. Yeah. I also see that the tag has been

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1 torn.

2 Q. Is that, again, your tie?

3 A. That is my tie.

4 Q. When you got into your office this day
5 when someone made these comments to you as you
6 came in about how your desk smelled, what did you
7 observe in your office?

8 A. You know, as I heard that, I didn't even
9 know what the heck they were talking about. But
10 when I opened the door and went over to my desk, I
11 saw my pictures of my kids and my best friend
12 lying scattered on the floor.

13 Q. When you say lying scattered on the
14 floor, can you be a little more descriptive of
15 what they were?

16 A. They were -- if this was my desk, they
17 were usually here on my -- you know, in front of
18 my monitor, and they were lying down on the floor
19 over to the left side of my desk.

20 Q. Were they lying face up, face down?

21 A. Face up.

22 Q. Were other items in the room disturbed?

23 A. Yeah. A lot of papers that I had on the
24 desk were kind of stacked in other places, not on
25 the desk.

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1 Q. How did you feel?

2 A. It was a kick in the gut at that point.

3 I realized what -- I realized that the text

4 messages about shooting in my office were not a

5 joke. I saw -- you know, it would have bothered

6 me anyway, but to see my kids' pictures scattered

7 on the floor, it was like a -- you know, it was a

8 very deep sign of disrespect, and I realized at

9 that moment that, you know, that was not only the

10 effect, but the intent.

11 Q. What was your interpretation of the

12 message sent by doing that?

13 A. The only honest way I can put it is that

14 this was Jason telling me you're my bitch, and

15 don't you forget it.

16 Q. Did you observe any bodily fluids on the

17 desk?

18 A. I cannot honestly say I did. In fact, I

19 didn't even know that they were on the desk until

20 seeing these videos.

21 MS. KRINCEK: I'm just going to object.

22 It assumes facts not in evidence. We don't have

23 any evidence that there were bodily fluids on the

24 desk.

25 MR. WHITE: We'll submit other pictures,

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1 Your Honor.

2 BY MR. WHITE:

3 Q. What was the material --

4 MR. WHITE: I'm sorry. May I proceed?

5 ARBITRATOR HABERFELD: Let me hear the
6 question.

7 (Whereupon, the pertinent part of the record
8 was read back by the court reporter.)

9 ARBITRATOR HABERFELD: Objection
10 sustained.

11 Do you want to rephrase?

12 MR. WHITE: Yes.

13 BY MR. WHITE:

14 Q. Did you see any fluids on the desk?

15 A. I did not.

16 Q. For instance, the pictures we just saw
17 appeared to depict some fluids on the desk.

18 Did you observe those when you got there?

19 A. No. The fluids that were on the desk in
20 these pictures, I did not. I -- they were not --
21 I did not see them at that time.

22 Q. Now, what's the material that the top of
23 the desk is made out of?

24 A. It is a porous soft leather.

25 Q. Have you ever spilled anything on it?

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1 A. Yes.

2 Q. And what does it tend to do with liquids
3 on it?

4 A. Soaks into it.

5 Q. So what effect did it have on you, or how
6 did you feel that people were making jokes about
7 this when you got there?

8 A. It was a -- it was a pretty -- you know,
9 it was upsetting on two different levels. One
10 level it was -- you know, as a -- as a
11 professional, it was -- and, you know, I felt like
12 my place of work where I spent most of my time,
13 more than I spend at home had been violated. I
14 felt like the intent of it was to humiliate me in
15 front of everybody. It was just -- but, also, it
16 was -- you know, it was one of those situations
17 where you see somebody treat other people poorly,
18 and then I realized, Well, it's now my turn.

19 Q. Did you -- let's go back, please, to the
20 exhibit we were looking at before, the texts,
21 Exhibit 27.

22 A. Okay.

23 Q. If you go to page -- the Bates number
24 463, which is the page after the one we were just
25 looking at where you said, I thought you were

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1 joking about shooting in here.

2 A. Yeah.

3 Q. Did you consider at this point really
4 saying something strong or stern to Mr. Gibson
5 about not liking this?

6 A. I did, but I thought better of it. I
7 wanted to keep my job.

8 Q. So how long did you think over these
9 texts when you are sending them?

10 A. I would say these are probably the
11 seventh or eighth drafts before I finally hit
12 send.

13 Q. Do you see the one where he says, I was
14 the person who cleaned off your briefs, so no one
15 saw anything confidential?

16 A. Yes.

17 Q. Would you go to the next page, please?

18 A. Okay.

19 Q. And there's the second text down to say,
20 I can get Sharon back in there to clean up
21 Olivia's juice. She apparently squirted
22 everywhere.

23 Do you think that was a joke or not a
24 joke? How did you understand it?

25 A. Well, at that time I understood that he

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1 was telling me that there were bodily fluids left
2 on my desk.

3 Q. And --

4 A. But now a couple days later, he would
5 send the maid in to clean it up.

6 Q. So do you see the next series where you
7 say, Can I -- can you understand how I might not
8 be all that happy?

9 A. Yes.

10 Q. Why aren't you being more explicit about
11 how you feel?

12 A. I had a wife and two kids and wanted to
13 keep my job, and I knew if I -- if you tell Jason
14 he's wrong, you don't last very long at the
15 company.

16 Q. Is that something you had observed during
17 your time at the company?

18 A. Yeah. In fact, it was why I had to fire
19 a number of people. I was tasked with doing that
20 confrontation.

21 Q. All right. Moving to the next page,
22 there's an exchange where you say, I'd rather talk
23 to you in person about this because I think texts
24 are creating more misunderstanding.

25 Why did you say that?

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1 A. Because I usually was able to talk things
2 out with Jason, like -- well, with anybody. I
3 think if you talk things out with somebody, you
4 can communicate to them how you are really
5 feeling, what things really are. I mean, you
6 always lose something in text messages and e-mails
7 that you don't get in face-to-face conversation.

8 Q. So he responds, We can have a 5:30
9 meeting. Would you like Kirk there?

10 Who is Kirk?

11 A. Kirk was, at the time, the HR director.

12 Q. And you respond, Don't be silly. It's
13 not a huge deal.

14 Was it a big deal for you?

15 A. It was a huge deal to me, but it was
16 like -- you know, I wanted to talk to him. You
17 know, when I sent that 23788 text message, I
18 thought that there was a possibility that I could
19 talk to my friend about this, and say, Look, I
20 don't know what you were thinking, but, you know,
21 that was not acceptable.

22 And then, you know, that next text
23 message made it really clear what it was. It's
24 like, Okay, we can have a meeting. Do you want
25 the head of HR there? It was almost -- what that

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1 means is, Are you challenging me?

2 Q. Do you mean that's how you interpreted
3 it?

4 A. That's exactly what it means. Yes,
5 that's how I interpreted it. That's why I -- you
6 know, it took me quite, you know, a significant
7 amount of time here to -- I mean, not that long
8 when you look at it, but that's why I sent that
9 and said, It's not that huge a deal. I just
10 didn't want it to blow up into that. I wanted to
11 talk to him face-to-face about it, say it's not
12 cool, and have him understand where I was coming
13 from.

14 Q. Did you meet with him?

15 A. I did.

16 Q. And what was his attitude during the
17 meeting?

18 A. He was agitated that I was making a big
19 deal of it.

20 Q. What did you say to him?

21 A. I remember telling him that, you know,
22 Look, I can -- I know I can work from wherever I
23 want, so if you are going to be doing this on a
24 regular basis, I will just start working from
25 home, and you can use that office for anything you

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1 want. But that, you know, I spent -- at the time,
2 I spent far more time in that office than I spent
3 with my family. So if it was going to be violated
4 like that, I just didn't want to be in it.

5 Q. What was his response?

6 A. There was some back and forth between us
7 about it, about me trying to make him understand
8 how it upset me. And he finally said, Look,
9 I'm -- you know, he said something like, I'm sorry
10 you feel that way. And he said, There, fine, you
11 fucking made me say it. I said I'm sorry, okay?
12 I won't do it again.

13 Q. What was his tone in that?

14 A. It was dismissive --

15 Q. Did you do anything --

16 A. -- angry.

17 Q. -- with your personal items in your
18 office after this?

19 A. No. But beforehand, I packed everything
20 up in my office because I just didn't want -- I
21 didn't want my -- you know, my wife's painting in
22 there, my kids' pictures, my -- you know, my
23 Red Sox and Patriots stuff in there. I just
24 wanted to take it all home and not work in that
25 office.

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1 Q. Did you eventually take it home?

2 A. No. After that conversation, I was, you
3 know, pretty confident that it wouldn't happen
4 again, that he understood where I stood as far as
5 my office goes. It was -- I mean, I don't know
6 why they shot -- well, I do know why they shot in
7 there in the first place, but it's --

8 Q. Well, let me ask you: Can you describe
9 that office?

10 A. It was a long narrow corridor-like
11 office. It was really about the -- there was not
12 very much room on either side of the desk, but
13 then it was a long kind of tunnel-like office with
14 a window at the end.

15 Q. How was the light?

16 A. You know, that was probably what bothered
17 me about this, is I could see if it was one of the
18 corner offices with all the big beautiful windows,
19 or if it was one -- but it was really a dark,
20 tunnel-like office. The window faced directly
21 north, so it got probably the least amount of
22 direct sunlight in the whole building.

23 Q. Now, Mr. Randazza, would you describe
24 yourself as being very sensitive?

25 A. I would not.

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1 Q. You voluntarily worked for a gay porn

2 company, correct?

3 A. I did.

4 Q. Are you comfortable around porn?

5 A. Yeah, I would say so.

6 Q. You represented many different types of
7 players in the adult industry?

8 A. I have.

9 Q. Do you tell off-collar jokes?

10 A. Almost all the time.

11 Q. Do you use rude language?

12 A. I'm suppressing it here, but, yes, often.
13 I'm well-known for it.

14 Q. Have you been to adult clubs with members
15 of the Excelsior team?

16 A. I went to a gay club that had a go-go boy
17 dancing at it, but, yeah.

18 Q. Any running jokes with Jason about him
19 kissing your wife?

20 A. Yeah, that was one of my favorites. That
21 just we would -- when we would go out places
22 socially, you know, Jennifer and Jason would take
23 a picture of themselves kissing, and then I would
24 be in the foreground with a horrified look on my
25 face. And we would take it in like grainy

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1 photograph style, making it look like it was the
2 front page of a newspaper, and they were always
3 really funny.

4 Q. Have you ever circulated to him what I'll
5 describe as cheesecake pictures of your wife?

6 A. Yeah. There was a photograph my wife had
7 taken of her on a couch that used to belong to the
8 company.

9 Q. Is that a couch that porn scenes used to
10 be filmed on?

11 A. As I understand it, yes.

12 Q. Did you mind that you had a couch that
13 porn scenes used to be filmed on?

14 A. No, because that's -- it came as
15 advertised, and, you know, we cleaned it off, and
16 it actually factored into the -- into the lower
17 price, I think.

18 Q. So given all that, Mr. Randazza, why did
19 you object to the scene being filmed on your desk
20 in your office?

21 A. Well, for a couple of reasons. Just
22 because you work at a gay porn company doesn't
23 mean that there is no line over which you can
24 cross. I mean, I think we agree that if they had
25 told me I have to be in the scene or I'm fired,

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1 well, that would be crossing the line. The
2 question is, Where is the line?

3 I think that was very clearly over the
4 line. No one had ever -- there had never been a
5 scene shot in anyone's office before. There was
6 no reason to shoot it in my office, except to send
7 me a message. It was just a sign of complete
8 disrespect, and it was treated that way.

9 You know, it's not like they dropped the
10 couch off at my office and said, Here, use the
11 couch or you are fired. I mean, that was my
12 choice. If they had asked me, Is it okay if we
13 shoot in your office because we think that the
14 long, dark tunnel nature of it will give a film
15 noir aspect to the filming, you know, I still
16 would have said no, but it was -- you know, it was
17 way over that line between respect and disrespect.

18 Q. Did it make you -- what did it make you
19 feel about your role in the company in terms of
20 how you were viewed or what your job was like?

21 A. I knew, given my couple of years
22 experience with Jason at the company, that that
23 was the beginning of the end. In fact, I remember
24 going home at that point and instructing my wife,
25 Don't buy anything expensive because I don't know

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1 how much longer I'm going to be at the company.

2 Q. After this, did you notice any change in
3 Jason's demeanor towards you?

4 A. Yes.

5 Q. How would you describe it?

6 A. I would say that, you know, while it
7 didn't go completely cold, it definitely cooled.

8 Q. Did he start criticizing you more?

9 A. Yes.

10 Q. Were you meeting with him personally as
11 much as you used to?

12 A. No, not as much.

13 Q. How about socializing?

14 A. Not as much.

15 Q. Did he -- was there any change in the
16 level of complaints about the legal department and
17 what it was doing?

18 A. It was -- I really got a lot of -- a lot
19 more pressure at that time to bring in more money,
20 that it was -- you know, it was -- there were
21 comments about whether or not they really need an
22 in-house counsel anymore. Then there was some
23 discussion of withdrawing my -- not my health
24 benefits, but the health benefits for my family.

25 So it was -- you know, it just started

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1 to -- it just started to gradually go downhill at
2 that point. I mean, it was sort of a -- but I
3 didn't feel like it was beyond being retrieved. I
4 had seen him turn on other people before and then
5 warm back up.

6 Q. Did you try -- did you decide to stay,
7 try to stay?

8 A. Yes.

9 Q. Were you -- did you change your tone
10 towards Mr. Gibson?

11 A. No, not really.

12 Q. Did you, you know, bring up this incident
13 again with him frequently?

14 A. No, I didn't bring it up again.

15 Q. You just said something about -- and this
16 reminds me of one question I failed to ask in an
17 earlier section about bringing in money.

18 A. Uh-huh.

19 Q. Was Mr. Gibson consistent in saying what
20 the company's focus should be in terms of
21 protecting its intellectual property?

22 A. No. That would go back and forth.

23 Q. Between what?

24 A. Well, you know, he was delighted with the
25 money I was bringing in. I mean, it was -- you

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1 know, the company generated on average, I would
2 say, about \$7 million a year in sales. And, you
3 know, I brought in, you know, I think one year a
4 million dollars. So when you've got a whole
5 company bringing in \$7 million and one person
6 bringing in a million, you know, that's a pretty
7 good contribution.

8 You know, but I would get, you know, kind
9 of like reminded of my place when I would say,
10 Hey, isn't it great how much money I'm bringing
11 in? Well, no, it's not. This company has made
12 millions and millions of dollars without you. We
13 don't need you to bring money in. Our biggest
14 focus is on keeping people from stealing it.

15 But then, you know, we would swing back
16 to, You haven't brought in enough money lately.
17 You know, What have you done for me lately?

18 Q. Did Mr. Gibson ever make comments related
19 to your ethnicity?

20 A. Yes.

21 Q. What is your ethnicity?

22 A. I'm Sicilian.

23 Q. And what type of comments would he make
24 about that?

25 MS. KRINCEK: Your Honor, I'm going to

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1 object to this line of questioning. They had a
2 claim in originally for hostile environment
3 discrimination based upon his national origin, and
4 in the amended arbitration demand, they dropped
5 that claim.

6 MR. WHITE: I'll move on, Your Honor.

7 ARBITRATOR HABERFELD: Okay.

8 BY MR. WHITE:

9 Q. Were there ever comments during this time
10 period about your family and your relationship to
11 them?

12 A. I'm sorry. Could you be more specific
13 about the time period?

14 Q. Sure. In 2012, when the relationship
15 began to change, were there comments about
16 families -- people with families and about you and
17 your family, in general?

18 A. I mean, actually, yeah. It seemed so at
19 the time to be sort of complimentary. You know,
20 like he didn't want kids around the place. You
21 know, didn't want -- didn't want -- you know,
22 there were a couple of us with kids, and he didn't
23 want them coming to the office to visit their
24 parents. But, you know, he did say, But, you
25 know, yours are okay.

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1 Q. Did the tone of that then change during
2 2012?

3 A. Well, they didn't really come by that
4 much after that and say hi to him anyways, because
5 it was -- I think we were somewhat withdrawing
6 from being more personally inter --
7 inter-involved.

8 Q. During this time in 2012, did he start
9 saying anything about whether or not to hire
10 people with families?

11 A. That was actually a kind of consistent
12 theme, because Jason made it clear that, you know,
13 if we could hire -- you know, if there was a
14 choice between a woman and not a woman, well,
15 women cost more for health insurance, for example,
16 so, you know, I said, Come on, man, you can't --
17 you can't do that.

18 So, yes, it was -- it was generally -- I
19 don't think it was a hard and fast rule, but it
20 was generally known that we wanted to keep costs
21 down, so low cost people were single men.

22 Q. Let me ask you about an exhibit. Before
23 we move on to another incident in 2012, I'm going
24 to --

25 ARBITRATOR HABERFELD: Can we go off the

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1 record for a second?

2 (Whereupon, an off-record

3 discussion was had.)

4 ARBITRATOR HABERFELD: Back on the

5 record.

6 MR. WHITE: Thank you.

7 BY MR. WHITE:

8 Q. I'm going to ask you a couple of

9 questions about drinking.

10 Have you seen a video that's in the

11 Respondents' exhibits of you drunk and naked

12 around a pool in Costa Rica?

13 A. Not my proudest moment, but, yes.

14 Q. Why were you in Costa Rica?

15 A. I'm really not sure, but the team was

16 there to go and scout locations for an upcoming

17 shoot.

18 Q. And did you volunteer to go?

19 A. No. I was asked to go.

20 Q. Did you do any legal work regarding

21 Costa Rica when you were in Costa Rica?

22 A. I tried to make myself useful, but the

23 only thing we did was we met with -- on the final

24 day we were there, we met with a Costa Rican

25 lawyer for a little bit at a casino and just

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1 talked to him for about a half hour.

2 Q. Is this about -- again, about locations?

3 A. No. It was just about hiring him as a --
4 as an attorney in Costa Rica.

5 Q. So how did the situation happen depicted
6 in the movie where you -- did you start off that
7 day drinking?

8 A. No. I actually started off that day
9 working. I was studying for the California Bar
10 exam, and I was -- I had a lot of ongoing work to
11 do.

12 I sat down at a large table in the house
13 where we were all staying, my laptop open and
14 working. And Jason walked up and put a glass -- a
15 big tall glass next to me that was full of some
16 clear liquid with some cloudy pink liquid floating
17 in it, and says, Here, it's Grey Goose and peach
18 soda. Have a drink with me. It was like
19 9:00 o'clock in the morning. It might have even
20 been before 9:00 o'clock.

21 I said, Are you kidding? I've got work
22 to do. There is no way I can drink that. To
23 which he responded, Awe, come on, it's my
24 birthday, drink with me. So when a friend says,
25 Come on, it's my birthday, drink with me, I was

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1 raised to say -- that's what you do. So I drink
2 the pint or so of apparently Grey Goose and peach
3 juice, and --

4 Q. Do you have a clear memory of the rest of
5 that day?

6 A. Pretty blurry memory of the rest of that
7 day.

8 Q. Now on other occasions you had drinks
9 with him willingly, right?

10 A. Yes.

11 Q. And is it fair to say that you had
12 been -- you've had too much to drink at a company
13 event before?

14 A. Before that?

15 Q. Yes.

16 A. I would say it's most likely yes. I
17 don't remember any specific occasions, but --

18 Q. Did there tend to be a lot of alcohol at
19 company events?

20 A. Oh, yeah. In fact, there were quite a
21 few times when I would have to leave my car at the
22 office.

23 Q. All right. I'm going to now move to
24 asking you about an incident in August of 2012.

25 A. Okay.

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1 Q. Do you remember an event the company held
2 at Lake Mead?

3 A. I do.

4 Q. And what type of event was it?

5 A. The company was having a party on a boat
6 on Lake Mead.

7 Q. Did you want to go?

8 A. I did not want to go.

9 Q. Why not?

10 A. Because I had a significant amount of
11 work to do to get -- I believe to get an
12 attorney's fees motion in on the Oron case.

13 Q. So why did you go?

14 A. Jason told me that he really wanted me to
15 go, that it would be bad for morale of the company
16 if I didn't go.

17 Q. Did you see it as any sort of
18 opportunity?

19 A. Well, I had hoped that maybe around that
20 time, you know, I could find some way to get
21 some -- get some face time with Jason, talk to him
22 about a few things going on.

23 Q. All right. So what did you do at the
24 party itself?

25 A. I stayed on -- sat up on deck and drank

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1 coffee all day. And I -- when I -- when we had
2 good reception, which we actually tended to have
3 strangely good reception out there, I would make
4 calls and try to manage some negotiations that I
5 was working on on settlements, and managed the
6 filing of the papers in the Oron case.

7 Q. Now, did you drive back yourself?

8 A. No.

9 Q. Who drove back? Well, did you drive a
10 car yourself?

11 A. I drove my own car, while most everybody
12 else took a bus that the company hired.

13 Q. Who else was in your car?

14 A. Jason was in my car, because he left his
15 gun in my car while he was out on the boat. And
16 Cameron Frost was in the passenger's seat. Jason
17 was in the driver's side rear. And then David
18 McCoig was also in the backseat with Jason,
19 alternating between jumping into my daughter's
20 child seat and sitting in the middle seat.

21 Q. Is this a car that you used personally
22 for your family?

23 A. Yeah, this was my family car.

24 Q. Remind me, who is Mr. McCoig?

25 A. Mr. McCoig was a performer. He's the

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1 performer that Jason had a relationship with. I
2 don't believe there was anybody between Jon Price
3 and him, and then who was eventually promoted to
4 some position in the executive wing. I don't
5 know. His office was right next to mine in the
6 executive wing.

7 Q. Did anything happen on that drive back?

8 A. Yeah.

9 Q. What was that?

10 A. Well, while we were driving down the
11 road, Jason began to give David a blowjob in the
12 backseat.

13 Q. Did he do anything before he began to do
14 that?

15 A. He reached up and adjusted the rear view
16 mirror.

17 Q. What was the impact of doing that?

18 A. It made it that you could see the blowjob
19 in the rear view mirror.

20 Q. Where was Mr. McCoig while this was
21 happening?

22 A. He was sitting on the -- in the middle
23 seat, kind of, you know, up against my daughter's
24 child seat.

25 Q. Did you say anything?

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1 A. Not to Jason. I said something to
2 Cameron.

3 Q. What did you say?

4 A. I said, Just another day at the fucking
5 office, huh? And Cameron rolled his eyes, and
6 said, Yeah, really.

7 Q. So as this was happening, did you say
8 anything to Jason?

9 A. I did say, you know, Hey, come on, my
10 kids sit back there.

11 Q. Now, what was -- how can you describe
12 Mr. McCoig's condition during this trip?

13 A. I believe the scientific term is "shit
14 faced."

15 Q. He was drunk?

16 A. Yes, quite.

17 Q. Were there any incidents with him being
18 drunk later in the trip home?

19 A. Yeah. I don't recall if it was before or
20 after the blowjob, or -- but he started to express
21 that he had to vomit, and could you please pull
22 over. Since we were on the highway, I didn't
23 think that that was the best idea, so we took the
24 next exit, and pulled over, and he puked there.

25 Q. Where was it that you pulled over?

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1 A. I pulled over and into a circular
2 driveway in front of the Mercedes dealership.

3 Q. Why was that?

4 A. I hated that Mercedes dealership. They
5 had previously damaged my car while working on it,
6 so I thought I could kill two birds with one
7 stone; not get vomit in my car and express my
8 disapproval with their business practices by
9 letting him vomit there.

10 Q. So did you say anything to Jason about
11 this after the ride was done?

12 A. No.

13 Q. Did you say anything to anyone?

14 A. Yes.

15 Q. To whom?

16 A. I remember talking to Kirk about it.

17 Q. Is that Kirk Addison, who was the HR
18 person?

19 A. Yes.

20 Q. How did it make you feel that this was
21 happening in your backseat?

22 A. I knew at that point I was getting fired.

23 Q. Why was that?

24 A. Well, again, you know, it's -- it's like
25 this is the kind of thing Jason does to show you

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1 that he's your -- you know, you're his bitch. I
2 mean, I hate -- I'm sorry to put it that way, but
3 I don't really know a non-colloquial way to
4 express that in shorthand, so --

5 Q. Did it bother you just in terms of that
6 happening in your backseat?

7 A. Well, yeah.

8 Q. Why?

9 A. Again, it's -- you know, there is a line
10 here, and it's -- I mean, I guess at the very
11 least, if you are going to have sex in the back of
12 somebody's car, you can ask their permission.

13 In fact, I drove a cab when I was in
14 college, and had that happen twice while I was
15 driving a cab. At least they had the common
16 decency to ask me if it was okay.

17 Q. Was the fact that your daughter's car
18 seat was there part of the way you feel?

19 A. Yeah. It wasn't a cab. You know, a cab
20 wasn't my car. After those events, I turned the
21 cab in, never saw that cab again. You know, this
22 is my car. My kids sit back there, yeah. I mean,
23 would you -- would you go to a party at somebody's
24 house and have sex in their kid's bed?

25 I mean, some people might, but I sure

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1 wouldn't. I don't know any decent person who
2 would.

3 MR. WHITE: Your Honor, actually this is
4 a point where I would be moving to a new subject
5 matter, so it might be a good time to break.

6 ARBITRATOR HABERFELD: How long would you
7 like to take for a lunch break, anybody?

8 MS. KRINCEK: I think we should take at
9 least an hour.

10 ARBITRATOR HABERFELD: That's fine.
11 Anybody need more?

12 THE WITNESS: No.

13 MR. WHITE: That would be fine.

14 ARBITRATOR HABERFELD: What time is it?

15 THE COURT REPORTER: It's 11:54.

16 ARBITRATOR HABERFELD: How about if we
17 come back, resume at 1:00 o'clock?

18 MR. WHITE: That would be fine.

19 ARBITRATOR HABERFELD: We're in recess
20 until then.

21 (Whereupon, a lunch recess was taken.)

22 ARBITRATOR HABERFELD: On the record.

23 Mr. White?

24 MR. WHITE: Thank you, Your Honor.

25 ///

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1 BY MR. WHITE:

2 Q. Mr. Randazza, I'm going to ask you about
3 the Oron litigation that's at the center of this
4 case.

5 A. Okay.

6 Q. When did you first hear of Oron?

7 A. I can't quite remember, but probably
8 sometime in 2011.

9 Q. And what did you understand it to be?

10 A. Oron is a -- what's known as a
11 cyberlocker site. They are -- these are Websites
12 where you can upload a file, and then other people
13 can download that file, as long as they get a
14 special link from you on that Website.

15 So you set up an account. It doesn't
16 actually display the video on the screen. They
17 just store it for you with this special link that
18 you click to download it.

19 The business model provides that
20 sometimes you have to join the site, so you have
21 to be a member of the site and pay money to them
22 in order to be able to download. Once they
23 figured out that that was probably going to create
24 some liability for them, most of the cyberlockers
25 adjusted their business model that you could

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1 download anything from the site you wanted to for
2 free. But it would be throttled so it would go
3 very, very slowly. It would take you two days to
4 download a movie. Or for the low, low price of
5 whatever per month, you could get rapid
6 downloading, which would allow you to download it
7 in a few minutes.

8 Now, they had -- these companies all had
9 these very neat legal fiction where they would
10 say, you know, We're just -- we're just a storage
11 company, but -- and then people are uploading
12 their personal photo albums to this, for example.
13 Well, if you were going to use the site to send
14 somebody your personal photo album, I would
15 imagine that once they receive it, they can --
16 they might wait to download that material if it's
17 one download. But if you are going back to the
18 site every day to get the latest episodes of TV
19 shows, movies, albums, it would become worth your
20 while to then become a member of the site.

21 And an additional facet of this is that
22 some of them would reward the uploaders. In fact,
23 I think they all rewarded the uploaders with how
24 many downloads people would have. So if I were to
25 send a file simply to you, and say, Hey, here is

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1 my photo album from our recent vacation, you're
2 going to download that one time, maybe the three
3 or four people that were with us are going to
4 download it. You would never really get any
5 serious bonus incentives unless you had, you know,
6 a couple hundred or couple thousand downloads to
7 it.

8 Well, what kind of content is going to be
9 downloaded like that? It's going to be movies,
10 record albums, TV shows, and the like. Almost all
11 of it pirated, because you could download it
12 legally and probably in the same amount of time
13 from iTunes or wherever else that was legit.

14 Q. Mr. Randazza, let me stop you there and
15 ask you, were locker sites like Oron a problem for
16 Liberty in terms of piracy?

17 A. Yeah, I saw them as the -- probably the
18 second largest problem after torrenters, and we
19 went after three of them in a row.

20 Q. Now, at some point did Oron kind of get
21 on your radar as a potential target?

22 A. Well, Oron was one of dozens of potential
23 defendants that I looked at. But they -- they
24 bumped up in the -- on my target in visibility,
25 interestingly enough, when they were sued by

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1 another company in San Diego. And their defense
2 counsel called me and asked me if I would be
3 willing to represent them along with him, because
4 he knew that I knew a lot about these kind of
5 Websites. So they approached me to be -- to
6 defend them.

7 Q. What did you say?

8 A. Well, I said, I will have to ask Jason.
9 So I went to Jason, and I said, you know, These
10 guys are -- they're on my radar, they want me to
11 do this. I actually wanted to do it because we
12 had had two cases against cyberlockers at that
13 point where we had been on offense. And to work
14 the other side of the case I think would have
15 given me a really good insight into some of the
16 possible defenses and some of the possible
17 pitfalls in our later cases if we ran into anybody
18 that put up a greater resistance.

19 And Jason said it would be okay, as long
20 as they settled the case that we were thinking
21 about filing against them, and I think he
22 wanted -- I think he was willing to take as little
23 as \$50,000 on that case.

24 Q. So what did you do?

25 A. I told him that, you know, I had a

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1 conflict. I told the defense attorney I had a
2 conflict. But that if he wanted to pay Liberty
3 Media, you know, I think I started the bidding at
4 100 grand, and, you know, let them know that we
5 could probably work it down to 50. And he said
6 that they weren't willing to pay anything.

7 So that -- that didn't work out, but it
8 did up them on the ladder of companies to hit.

9 Q. So what would have been, at this point,
10 the impediment to suing Oron or collecting from
11 them?

12 A. At that point, you know, they were an
13 offshore company. I didn't quite know enough
14 about them to make it worth suing them. I didn't
15 know where their money was. You know, I knew that
16 they were being represented in the US. I
17 didn't -- but I didn't know where their banking
18 was. And given the fact that they were already a
19 defendant in a lawsuit, I wanted to watch how that
20 played out a bit.

21 You know, when you are -- when you are
22 the second one in line, it's usually not that good
23 of a deal, because I found with most of these
24 pirate sites, they would settle, you know,
25 somewhat reasonably with the first company that

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1 went after them, but then the second time they got
2 hit, they would say, Well, we just can't keep
3 settling with anybody. So kind of like a vaccine,
4 you know, once they pay their -- pay the piper the
5 first time, they tend to want to fight like hell
6 the second time.

7 Q. So did there come a time when Oron
8 approached you again in some context?

9 A. Well, they popped up again because they
10 wound up sending a demand to PornGuardian, of all
11 companies, because PornGuardian was starting to
12 make public statements that they were -- they had
13 a lot of piracy on the site. So they threatened
14 PornGuardian with a defamation lawsuit through an
15 attorney by the name of Stevan Lieberman.

16 PornGuardian came to me and said, What do
17 you think of this? I said, I think this is
18 fantastic, because now if they do sue you, you
19 know, I may have -- it would be kind of cool if
20 you shared some information with us, we'll do a
21 counterclaim, then bring in a third-party claim by
22 Corbin Fisher, get some more money out of them,
23 and they are not going to be able to contest
24 jurisdiction.

25 Because they were a Hong Kong based

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1 corporation with -- and I knew at the time or
2 suspected at the time ownership in Eastern Europe,
3 Russia, Moldova, Ukraine. It was never quite
4 clear where.

5 Q. So did you wind up approaching, talking
6 to Oron on behalf of Liberty once they had made
7 that threat to PornGuardian?

8 A. Yeah, the -- I mean, the exact chain of
9 events wasn't quite all that clear, but as I
10 looked at it, I knew what we were going to have to
11 do was make a -- you know, deploy this strategy of
12 getting their money locked up, because I figured
13 out that some of their money was at PayPal, but
14 most of their money was wrapped up in a bank in
15 Hong Kong, and it was going to be expensive to go
16 after them. But, additionally, you know, they
17 came onto my radar from a company called AEBN,
18 which is also known as Datatech, their general
19 counsel, Datatech's general counsel and I would
20 share information all the time on piracy cases,
21 because he really wanted to team up with us where
22 we -- we would do a joint case against a pirate
23 site, split the expenses, and then split the take.
24 Q. Did there come a time when you started to
25 make demands to Oron on behalf of Liberty?

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1 A. Yeah. I think I sent something to
2 Lieberman, and Lieberman and I went back and forth
3 on it. We were going to try to do a mediation. I
4 think that was -- that was my intent. I always
5 tried to get these parties into mediations because
6 I knew that if I got into a mediation, that meant
7 we could avoid discovery.

8 Q. Let me ask you to take a look at
9 Exhibit 58, which is in the second binder that you
10 have.

11 A. Okay. All right. I got it.

12 Q. Do you recognize what that is?

13 A. Yes.

14 Q. What is it?

15 A. It's a memo that I sent to Jason and
16 Brian Dunlap.

17 Q. Does this sort of indicate what the
18 status was of your negotiations with Oron at this
19 phase?

20 A. Yes.

21 Q. So here you're talking about high
22 numbers, 500 -- or \$500,000. Before you said that
23 you had thought of only 50 or 100,000.

24 Why the higher number?

25 A. Well, it's negotiations strategy. You

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1 always -- you know, the amount of work I had done
2 at that point, I felt like they should pay us
3 more. And the more I looked at it and knew where
4 the money was, probably was -- I felt like I had
5 better cards in my hand.

6 Q. Did you keep Mr. Gibson informed about
7 what was going on in this negotiation?

8 A. Yes.

9 Q. Did there come a time when the other side
10 offered to -- offered you or your firm money in
11 order to conflict you out or to close the deal?

12 A. Yes.

13 Q. Now, before we talk about that
14 specifically, let's talk about that as a practice.

15 Is it unusual, in your experience in the
16 adult industry in these negotiations with sites,
17 for them to try to offer something to the lawyer
18 on behalf of the property holder?

19 A. It happened to me almost every single
20 negotiation that we had.

21 Q. And did you -- did it ever happen? Did
22 anyone ever pay you money to incentivize you to
23 get your client to settle?

24 A. No.

25 Q. Did anyone ever complete with you a deal

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1 where they hired you to conflict you out of future
2 cases?

3 A. No.

4 Q. Did you ever play along with the
5 negotiations?

6 A. Almost every time.

7 Q. Why would you do that?

8 A. Because it's -- you know, you are trying
9 to reel the fish in. As long as I've got -- if
10 I've got an opposing counsel that wants to suggest
11 this kind of thing, if I think I can string him
12 along, you know, for example, you get -- let's say
13 you get them to agree, hypothetically, they will
14 give me a million dollars to conflict me out of
15 future work. Well, we're talking about that, his
16 client has obviously agreed that a million dollars
17 going out of his company is acceptable. It's just
18 a matter of where does it wind up.

19 Q. So what would be your purpose ultimately?
20 What's your goal?

21 A. To increase the settlement amount.

22 Q. To whom?

23 A. To Corbin Fisher.

24 Q. So --

25 A. Because after all, I would get 25 percent

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1 of it one way or the other.

2 Q. So did you ever tell the people at Corbin
3 Fisher about this?

4 A. All the time.

5 Q. How would you describe it to them?

6 A. Well, I described it colloquially. I
7 tried to explain it to Jason the first time it
8 happened, and his answer was, Well, why don't you
9 just do it? Now we can get the case settled. And
10 I said, Well, I really can't. It's kind of like
11 he's trying to bribe me to not -- to not adhere to
12 the rule that I can't conflict myself out of
13 future work for payment.

14 And so we colloquially referred to it as
15 a bribe. But that's certainly not an accurate
16 legal description of it.

17 Q. Did you ever tell them whether or not it
18 was common in the industry?

19 A. Well, they knew it was common in the
20 industry because every time it happened, I
21 mentioned it.

22 Q. Please look at Exhibit 41 in the first
23 volume. And let me know when you are there,
24 please, and that you are ready to answer questions
25 about it.

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1 A. Okay. Yeah. Here we are.

2 Q. Do you recognize the e-mail exchange in
3 Exhibit 41?

4 A. I do.

5 Q. And what was the -- what case was the
6 context of this?

7 A. This was the TNAflix case.

8 Q. What year is that?

9 A. 2010.

10 Q. And was the TNAflix a case where the
11 opposing parties engaged in this sort to dialogue
12 with you?

13 A. Yes.

14 Q. And here near towards the top, Mr. Gibson
15 writes, Are these the same guys who offered to
16 bribe you?

17 A. Yep.

18 Q. So does that refer to an earlier case?

19 A. I don't know if it refers to an earlier
20 case or just an earlier discussion about this
21 case.

22 Q. Was that the only time that you discussed
23 this going on with Mr. Gibson?

24 A. No.

25 Q. Please turn to Exhibit 53, which is in

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1 the second volume.

2 MS. KRINCEK: Sorry. 53?

3 MR. WHITE: 53. Thanks.

4 THE WITNESS: Got it.

5 BY MR. WHITE:

6 Q. Let me know when you recognize it and you
7 are ready to discuss it.

8 A. I'm ready.

9 Q. Do you recognize what this e-mail
10 exchange between you and Mr. Gibson is about?

11 A. Yes.

12 Q. What is it about?

13 A. It's about a settlement in the Megaupload
14 case.

15 Q. Now, towards the bottom, there's an
16 e-mail from an Ira Rothken.

17 A. Yes.

18 Q. Who is that?

19 A. He is the lead counsel for Megaupload.

20 Q. And what was he trying to pitch to you?

21 A. You know what, I want to correct
22 something that I talked about earlier.

23 Q. What's that?

24 A. It was Megaupload where they approached
25 me to be defense counsel, not Oron.

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1 Q. Okay.

2 A. It was -- and it was Venkat Balasubramani
3 who is copied on this. The two cases were so
4 similar, I conflated them in my head.

5 Q. So did you learn about Oron, then, when
6 they approached PornGuardian?

7 A. Yeah. That was -- that was when that one
8 came to my attention. This one came to my
9 attention when Venkat asked me would I be counsel
10 for them in their case defending against them
11 in -- defending against Perfect 10 in the Southern
12 District of California.

13 Q. So what were they -- what in this e-mail
14 change that you forwarded to Mr. Gibson, what was
15 Mr. Rothken trying to pitch?

16 A. Mr. Rothken was, like every one of these
17 pirate sites, I don't know if there is a memo that
18 goes around to them or what, but in trying to
19 pitch to me that I would take a payment to not
20 represent anyone against Megaupload again.

21 Q. And so you forwarded this to Mr. Gibson?

22 A. I did.

23 Q. Was it unusual for you to keep him
24 informed about things like that happening in
25 cases?

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1 A. No, it was pretty -- pretty normal.

2 Q. Now, in this e-mail, you -- in this
3 e-mail chain, you indicate you're concerned about
4 rules of professional conduct --

5 A. Uh-huh.

6 Q. -- in this.

7 Is that a tactic you would use in these
8 negotiations to try to raise the amount you could
9 get from them for Liberty?

10 A. I mean, it would depend on the opposing
11 counsel. I mean, Ira was, I felt in doing this,
12 was not -- Ira was just, you know, incredibly
13 insistent on this, and even wanted to put it into
14 the settlement agreement.

15 I mean, my negotiations with him were a
16 little different than my negotiations with other
17 defense attorneys who brought this issue up.

18 Q. So what I'm asking is did you take this
19 tact of telling him, I've discovered an ethical
20 problem more than once in multiple cases?

21 A. Yes.

22 Q. And was that part of your strategy?

23 A. It was.

24 Q. And did Megaupload, this case, did they
25 wind up hiring you?

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1 A. Oh, no.

2 Q. Did they wind up paying you any money to
3 conflict you out?

4 A. No.

5 Q. Did they wind up paying you a bribe?

6 A. No.

7 Q. How about in the TNAflix case that you
8 just mentioned a moment ago?

9 A. No.

10 Q. So returning to Oron, in Oron was there a
11 discussion of you getting money or being
12 conflicted out as part of a settlement structure
13 with Liberty?

14 A. Yep.

15 Q. And did you believe it was ever going to
16 come to fruition?

17 A. No.

18 Q. Had any of these ever come to fruition?

19 A. Never.

20 Q. Did you ever go as far as to, for
21 instance, send a proposed retainer agreement --

22 A. Yes.

23 Q. -- or something like that to the people
24 who were proposing this to you?

25 A. I sure did.

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1 Q. Did any of them ever get signed?

2 A. Nope.

3 Q. What is your understanding of what this
4 course of negotiation produced for Liberty?

5 A. It would coax more money out of the other
6 party. You know, if they were -- at least that
7 was my -- you know, my belief that if they were
8 okay with the idea of, let's say in this case, I
9 mean, I don't know what Ira's number went up to.
10 I want to say at one point it was up to 50 grand
11 or so.

12 Well, if they were willing to give 50
13 grand to me, why not give the 50 grand to Liberty,
14 because that puts more on the fire, gives me more
15 ammunition to go after more targets, and, you
16 know, ultimately benefits the clients and benefits
17 our campaign.

18 Q. Would you please turn to Exhibit 90, 9-0,
19 in the second binder?

20 ARBITRATOR HABERFELD: What's the number
21 in the second binder, please?

22 MR. WHITE: It's 90, Your Honor.

23 ARBITRATOR HABERFELD: Thank you.

24 THE WITNESS: Yes, I see it.

25 ///

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1 BY MR. WHITE:

2 Q. And tell me when you recognize it and
3 Exhibit A to it.

4 A. Exhibit A. Yes, I recognize Exhibit A.

5 Q. Exhibit A, which is Bates stamp -- sorry,
6 it's not Bates stamped. At the top of the page it
7 says 2 of 4. Do you recognize what that exhibit
8 is?

9 A. Is it the one that says Greenberg &
10 Lieberman at the top of it?

11 Q. Yes, that's what I'm referring to.

12 A. Yep.

13 Q. Is this a term sheet that you eventually
14 reached with Oron?

15 A. That's a settlement agreement the way
16 that both I and Judge Navarro interpreted it.

17 Q. Well, this is dated July 1st. Is this
18 when you reached the settlement with Oron?

19 A. I believe so.

20 Q. And how did you come to structure it in
21 this particular way where you are signing instead
22 of someone from Liberty?

23 A. This is what Lieberman sent me, and when
24 he sent it to me, I transmitted it to Jason, and
25 Jason and I, I remember, we discussed it. And I

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1 didn't particularly like the terms of it. There
2 was some nonmonetary terms that I thought were
3 problematic. There was certainly a Paragraph 2 I
4 didn't like because it put me personally on the
5 hook. However, Paragraph 1 is the thing that got
6 Jason happy. And he said, Well, if we sign this
7 now, do we lock them in to this as a settlement
8 agreement? I said, That's the way it looks to me,
9 so I signed it and sent it back to him.

10 Q. So Paragraph 2, when you say it makes you
11 liable, are you talking about the language of
12 Randazza transfer them before settlement is final,
13 you will be personally be liable --

14 A. Yes.

15 Q. -- for the funds plus a ten percent
16 penalty?

17 A. Yes.

18 Q. Did you give this agreement to Mr. Gibson
19 to review?

20 A. Yes. Well, hold on. I'm not sure if I
21 gave it to him or if I read it to him over the
22 phone.

23 Q. Well, let's --

24 A. I know that he is the one who told me to
25 sign it.

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1 Q. Let's take a look at Exhibit 63, please.

2 A. Okay.

3 Q. It should be in the same volume.

4 A. Got it. Yeah.

5 Q. Tell me when you recognize this e-mail

6 and when you are ready to answer a question about

7 it.

8 A. I am ready to answer a question about it.

9 Q. Does this indicate to you whether or not

10 you sent the agreement in question to Mr. Gibson?

11 A. Yes, it would have been attached to this

12 e-mail, from the looks of it.

13 Q. And did he give you approval in writing?

14 A. He did.

15 Q. Now, did Oron go ahead and then give you

16 the \$550,000?

17 A. They did not.

18 Q. Did they indicate why not?

19 A. They took the position that it was not a

20 settlement agreement, it was just a terms sheet,

21 and that it was not intended to be seen as an

22 offer to be accepted.

23 Q. All right. What did you do strategically

24 in response to that?

25 A. I filed a motion to enforce the

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1 settlement agreement.

2 Q. Was that the Exhibit 90 that we saw to
3 which the term sheet was Exhibit A?

4 A. That was Exhibit 90, yes.

5 Q. And what was the result of that motion?

6 A. It was successful.

7 Q. Please turn to the next exhibit,
8 Exhibit 91.

9 A. Yes.

10 Q. Tell me if you recognize that?

11 A. I do.

12 Q. And what is that?

13 A. This is the Order by Judge Navarro
14 granting the motion to enforce the settlement.

15 Q. Now, even as you have the settlement and
16 you are enforcing it, are you also pursuing other
17 methods of putting pressure on Oron?

18 A. Yes.

19 Q. What kind of methods?

20 A. Well, we had done -- before we got that,
21 we had filed a motion for a TRO in Nevada, and
22 then simultaneously we sought a Mareva injunction
23 in Hong Kong.

24 Q. What's a Mareva injunction?

25 A. It's this really cool thing that you have

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1 procedurally everywhere that there is -- pretty
2 much everything that was ever a British colony,
3 except the United States. It's a worldwide
4 injunction on any assets. It usually goes in
5 conjunction with an Anton Piller order, which
6 gives you worldwide discovery on every single
7 thing that the company would have.

8 So it's -- it was like a simultaneous
9 raid on their accounts and their rights to
10 disburse any money from them in both the Nevada
11 case and then in the Hong Kong case in furtherance
12 of that case, so the two cases worked together
13 simultaneously to lock everything up.

14 Q. Did you perceive, based on your
15 negotiations, that that seemed to put any pressure
16 on Oron?

17 A. Oh, yeah. It was awesome. I mean,
18 that's why we got that term sheet. At that
19 point -- I mean, I think we were -- I think we
20 went from filing the case to that settlement
21 agreement in like a week. So from -- you know,
22 from them saying, You will never get us, you know,
23 our money is all hidden, and you will never get
24 jurisdiction over us, to how about \$550,000 in
25 less than a week.

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1 Q. Now, how did you go about getting the
2 injunction in Hong Kong?

3 A. I retained a Hong Kong law firm to work
4 in conjunction with us on it, so they would --
5 they would work all -- all night long, and we
6 would work all day long, and then -- it was a
7 pretty -- pretty busy period of time. It was like
8 phone calls and hearings at 3:00 o'clock and
9 4:00 o'clock in the morning here.

10 Q. Now, were they going to charge? The
11 Hong Kong firm, were they going to charge money
12 to -- that's a terribly stupid question.

13 How much did you think they were going to
14 charge?

15 A. They gave us an estimate, they said, you
16 know, it would probably cost \$50,000. That's
17 what -- I presumed it would probably be a little
18 more than that, but that was their estimate, as I
19 understood it.

20 Q. So did you go to Mr. Gibson about the
21 need to fund that?

22 A. Yes.

23 Q. And what did you suggest to him?

24 A. I suggested -- you know, my original plan
25 was to try to get AEBN to split it with us,

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1 especially since AEBN, remember, was investigating
2 them first. I mean, really, I kind of -- I kind
3 of stuck AEBN's general counsel when we moved on
4 this without waiting for him. But they were
5 taking too long to get involved, so we decided to
6 go at it alone. But I said, you know, We're going
7 to need money to pay these guys.

8 Q. And so what did -- did you tell
9 Mr. Gibson your assessment about whether or not it
10 would be worth it to invest -- to pay money to
11 Hong Kong?

12 A. I made it clear that as far as I could
13 tell, if we did this, we would have every dollar
14 they had, except what apparently they had spirited
15 away in gold bars to -- I think to Moldova. We
16 would have every -- every bit of cash they had in
17 the world locked up, and that would probably bring
18 them to the table.

19 Q. All right. What was Mr. Gibson's
20 response?

21 A. Woo hoo.

22 Q. Okay. Well, what was his response
23 about --

24 A. I mean, literally.

25 Q. -- sending the money to Hong Kong?

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1 A. Oh, you know, he was a little bit
2 reluctant to lay out that kind of money, and, you
3 know, asked me if I would front half of it.

4 Q. How did you respond to that?

5 A. I -- I agreed to do it.

6 Q. Did he say anything to you about why you
7 should be expected to front half of it?

8 A. That if I didn't have the faith in the
9 case or the company, you know, that -- it would
10 show that I didn't have much faith in the case or
11 in the company if I wasn't willing to risk 25
12 grand -- you know, to put -- risk 25 grand of my
13 own money.

14 Q. How did you interpret that?

15 A. That it would be considered to be a sign
16 of disloyalty if I didn't advance \$25,000 of my
17 own money to hire these Hong Kong lawyers.

18 Q. Did you describe it to the Excelsior team
19 as an investment that you were doing with them?

20 A. No.

21 Q. How did you describe it?

22 A. Local counsel fees that we have to pay.
23 I mean, this is how you -- it was a cost that it
24 was going to take in order to do this case.

25 Q. In your assessment, did the money that

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1 was sent to Hong Kong have an impact on your
2 ability to settle?

3 A. Yeah. I mean, like I said, we got the
4 Mareva injunction. They didn't have any ability,
5 based on the Nevada injunction, they couldn't move
6 any money out of their PayPal account in the
7 United States. And, you know, they argued that
8 that PayPal account wasn't really subject to the
9 Court's jurisdiction there because it was an
10 offshore PayPal account.

11 But the Mareva injunction closed that
12 hole. And without the Hong Kong lawyers, we would
13 never have gotten the Mareva injunction. They
14 might have been able to just squeeze away with all
15 their money, and then there we are holding the bag
16 on a pretty big amount of work and, you know,
17 another judgment that we couldn't collect.

18 Q. Did you document in any way the fact that
19 you were advancing \$25,000 towards costs in
20 Hong Kong?

21 A. Yes.

22 Q. How did you do that?

23 A. I think I put it on an expense report,
24 and I also wrote up a promissory note.

25 Q. Would you turn to Exhibit 70, please?

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1 A. Okay. Okay. I see it.

2 Q. Do you recognize what it is?

3 A. I do.

4 Q. What is it?

5 A. It's the promissory note.

6 Q. Did you put in here any interest?

7 A. No.

8 Q. So did Mr. Gibson sign the promissory
9 note, that you recall?

10 A. I have never seen a signed copy of it,
11 that I can recall.

12 Q. Did he inform you that he had signed it?

13 A. Yes.

14 Q. Where was the physical copy that you had
15 prepared located?

16 A. I left it in my office -- or it was left
17 in my office. I think Erika told me she saw it
18 signed. It was on my desk when I went away on
19 vacation.

20 Q. All right.

21 ARBITRATOR HABERFELD: And Erika is who?

22 THE WITNESS: My former paralegal at the
23 time, Erika Dillon.

24 MS. KRINCEK: Well, I guess to be
25 precise, it should be she was employed by the

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1 company.

2 THE WITNESS: I will adopt that as my
3 answer.

4 BY MR. WHITE:

5 Q. Did you later -- we're jumping ahead
6 here. But did you ever return to your physical
7 office after your employment relationship with
8 Excelsior ended?

9 A. I did.

10 Q. Did you find, then, the promissory note?

11 A. No. It was missing.

12 Q. Now, what was your strategy after you got
13 the order from the court enforcing the settlement?
14 In other words, was it pure litigation, or were
15 you looking, again, to try to settle the
16 situation?

17 A. I think we had some conversations with
18 Lieberman about just paying a certain portion of
19 it, and then we could all move on. And then he
20 got replaced at some point.

21 Q. By whom?

22 A. He was replaced by an attorney by the
23 name of Val Gurvits, G-u-r-v-i-t-s.

24 Q. Is that someone with whom you had dealt
25 before?

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1 A. Again and again.

2 Q. Is he also known in the industry as
3 someone who represents adult clients?

4 A. He is known as the pirates' attorney of
5 choice.

6 Q. So what were the risks at this point so
7 you would go onto settlement? If you had the
8 order to enforce the settlement agreement, what
9 were you trying to enforce it on?

10 A. Well, I didn't want to have any -- again,
11 I didn't want to have any discovery because Jason
12 didn't want that to happen. And, also, Jason was
13 really leaning on me hard to get the money fast,
14 being -- just waiting for it to play out was not
15 an option. I want that money, and I want it now.

16 And I think you can see in one of the
17 earlier exhibits you pointed to, he said, We need
18 it by Friday, next Friday at the latest. He led
19 me to believe that the company was in such a state
20 of cash poor crisis that without it, we would have
21 some serious issues at the company.

22 Q. Now, in the subsequent negotiations after
23 granting the motion to enforce, did this whole
24 issue of somehow giving you what was called a
25 bribe or conflicting you out come up again?

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1 A. It came up, yeah. It came up before with
2 Lieberman, and then it came up again with Gurvits.
3 I was kind of laughing at the fact that it came up
4 with Gurvits again.

5 Q. Did you eventually bring a version to
6 Mr. Gibson during this time period prepared by
7 Mr. Gurvits that had some written term in it
8 purporting to give you money as part of the
9 settlement?

10 A. No. It was going to transfer -- it was
11 going to transfer all this money that was going to
12 go to the company to my trust account, and then it
13 was going to transfer a bunch of money to Gurvits'
14 trust account, which Gurvits claimed he was then
15 going to use to retain me once everything was
16 settled in order to try and help Oron not get sued
17 in the future.

18 Q. All right. I'm going ask you to look at
19 one of the Respondents' exhibits.

20 Mr. Whitehead is going to assist with
21 that. It's 325.

22 THE WITNESS: Okay. At some point in the
23 near future, I've got to take a bathroom break,
24 but it doesn't have to be now.

25 MR. WHITE: Can you wait five more

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1 minutes?

2 THE WITNESS: Yeah.

3 MR. WHITEHEAD: 325, Ken?

4 MR. WHITE: Yes.

5 THE WITNESS: Got it. This is a -- this
6 is a marked-up draft of the agreement going back
7 and forth between me and Gurvits.

8 BY MR. WHITE:

9 Q. And is this one that you presented to
10 Mr. Gibson --

11 A. Yes.

12 Q. -- to keep him up-to-date about the
13 status of the negotiations?

14 A. Yes. I wanted him to know where things
15 stood at that point.

16 Q. How did Mr. Gibson tend to react when
17 people were making these suggestions? Did he give
18 any suggestion of whether he thought it should or
19 shouldn't be done?

20 A. What suggestions are you referring to?

21 Q. The suggestions from opposing counsel
22 about a bribe or a conflicting out?

23 A. I remember the first time it happened, he
24 said, Well, why don't you just do it, because that
25 will get us our money quicker?

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1 Q. All right. In this one, if you look at

2 Exhibit 325, the first page --

3 A. Yes.

4 Q. -- towards the bottom.

5 A. Yes.

6 Q. There's a reference to \$75,000 in there.

7 A. Yep.

8 Q. And there's a notation, Who gets this?

9 A. Right.

10 Q. Who was, under this draft, at this time
11 supposed to get that?

12 A. That was supposed to go into Val Gurvits'
13 trust account under this agreement.

14 Q. But who was supposed to get it next, the
15 way you and Val had been negotiating it?

16 A. According to Val, he was then going to
17 transfer it to me.

18 Q. Was it your intention ever to actually
19 get it for yourself?

20 A. No.

21 Q. Did you explain that to Jason?

22 A. I did.

23 Q. So let's take a look -- it's inevitable
24 that we bounce around a lot, I guess -- at
25 Exhibit 66. That's in our second volume.

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1 A. Okay.

2 Q. I'm sorry. That's an incorrect one.

3 Just a moment, please, and I'll tell you the
4 correct one. So many exhibits.

5 Okay. I'm sorry. That should be 67.

6 A. Okay. Got it.

7 Q. I would like you to look at all three
8 pages, and let me know when you are ready to
9 answer questions about it.

10 A. Okay.

11 Q. Okay. So here there is an e-mail at the
12 bottom of the page from Mr. Gibson saying that his
13 stomach is churning.

14 A. Yeah.

15 Q. And he talks on the third page about the
16 bribery deal sits funny --

17 A. Yep.

18 Q. -- especially when there is no guarantee
19 we can even get the extra 75 from their attorney's
20 trust fund.

21 A. Right.

22 Q. Now, is that, then getting it from the
23 trust fund, consistent with what you told
24 Mr. Gibson?

25 A. That's exactly what it is. But he was

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1 concerned that Val wouldn't turn it over and Val
2 would keep it, which I kind of figured would
3 happen actually, myself.

4 Q. And were you trying to soothe his
5 concerns about that?

6 A. Yes.

7 Q. All right. Did you -- how did he start
8 reacting to you at this point? After this e-mail
9 exchange, was there a further change in the tone
10 of your relationship?

11 A. I mean, it was -- it was before that,
12 really. This was -- this all struck me as kind of
13 strange and pretextual when it happened.

14 Q. Well, did you follow up on the issue?

15 A. I did.

16 Q. Would you turn to 69, please?

17 A. Got it.

18 Q. Do you recognize what 69 is?

19 A. Yes.

20 Q. What is it?

21 A. It's an e-mail that I sent to Jason.

22 Q. Is this discussing the 75,000?

23 A. It is.

24 Q. What was your purpose of the e-mail?

25 A. To try to get Jason to speak with me.

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1 Q. Now, Point 2 here says, I fully disclosed
2 it to you even before it happened.

3 A. Yes.

4 Q. I told you they were making overtures
5 about that; is that true?

6 A. Yes.

7 Q. Did Mr. Gibson respond to this e-mail by
8 saying, That's not true, or you never told me, or
9 anything like that?

10 A. Not to my recollection, he didn't.

11 Q. Now, Section 3 here, Bullet Point 3 talks
12 about getting \$75,000 and giving it to Liberty.

13 A. Yep.

14 Q. Can you read that paragraph and then
15 explain what you meant by it?

16 A. Let's -- let's just say that Val for the
17 first time in my three or four year history with
18 him, maybe it was less than that, whatever,
19 multiple year history with him actually came
20 through on something like this, there was
21 originally talk of it being for them retaining me.
22 But Val and I talked about maybe it could be
23 restructured as a settlement to me because I -- I
24 wanted the money to go to Liberty.

25 And, frankly, it worked better for me if

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1 it went to Liberty, just as a matter of
2 self-interest. Although that might not seem to
3 make mathematical sense, I wind up getting to do
4 more cases. I'd rather do three or four more
5 cases and get \$150,000 per.

6 Q. How can it be a settlement to you? What
7 claim would you have against Oron?

8 A. They were pulling some pretty shady stuff
9 with me. I felt that there was a valid defamation
10 claim against them.

11 Q. Did they make statements outside of court
12 papers about you?

13 A. They did not. But what I did was I
14 argued with them about the fact that it seemed
15 like they were using what's known in -- at least
16 under -- I think there is a California case, the
17 creative defamer defense, where, you know, you
18 can -- the litigation privilege only protects you
19 so far. If it's obvious you put something
20 pretextually into a pleading in order to use it
21 that way, there is at least some avenue there. I
22 mean, some of the stuff they were putting in there
23 was really sleazy.

24 Q. So in -- is this what says in 3 that you
25 were trying to -- you know, you would be giving

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1 75,000 to Mr. Gibson, is that anything different
2 than what you conveyed to him before?

3 A. No.

4 Q. All right. Now look at the next
5 paragraph.

6 A. Here's -- well, let me elaborate here.

7 Q. Sure.

8 A. Here's part of the problem. When I
9 called Val, I said, Val, I can't -- like I said in
10 Point 1 here, I can't take a dollar that could
11 otherwise go to Liberty. And Val said there is
12 absolutely no way that they are going to get more
13 than that. That's all they are going to get.

14 So I had to structure it in a way if Val
15 was actually going to pay it, that it masked the
16 fact that it was going to the client.

17 Q. Now, the next paragraph you say -- you
18 say, I've seen enough people get fired from here
19 that I can smell blood when it's in the water.

20 A. Yep.

21 Q. Why did you say that?

22 A. Because, like I said before, I was -- at
23 that point, I knew or at least felt like there was
24 a very good chance I was getting fired. I was
25 clearly on the disfavored list. I kind of felt

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1 like if I brought in a big win for the company,
2 that there might be a way that we could turn that
3 around.

4 Q. Did his reaction to this issue and his
5 discussion of the 75 form your belief at all that
6 you thought you were about to be fired?

7 A. Yes. It was just very obvious. I mean,
8 it was pretty obvious that he was doing something
9 here, saying it was pretext -- you know, it was
10 pretextual because he had never reacted this way
11 before. And this was always a litigation tactic,
12 especially when dealing -- a settlement tactic,
13 especially when dealing with Val.

14 Q. Had it come up with Val specifically
15 before?

16 A. It came up with Val specifically before.

17 Q. So did you make attempts at this point to
18 talk to Mr. Gibson about this particular issue?

19 A. I did try to, yes.

20 Q. How successful were you?

21 A. Very unsuccessful.

22 Q. Did he convey to you that you were going
23 to be fired?

24 A. He did not.

25 Q. All right. Well, did he convey anything

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1 to you to the contrary?

2 A. No. I mean, he did say -- I remember
3 some communication with him where he said, Don't
4 presume the worst. But at that point, I was --
5 you know, I came to figure out that I was already
6 fired at that point. I just didn't know it yet.

7 MR. WHITE: I'm sorry. My computer just
8 had a minor slow down, but just a moment.

9 May we take the brief break that
10 Mr. Randazza requested?

11 ARBITRATOR HABERFELD: Sure. See you
12 back in ten.

13 (Whereupon, a recess was taken.)

14 ARBITRATOR HABERFELD: Back on the
15 record.

16 MR. WHITE: Thank you.

17 BY MR. WHITE:

18 Q. Mr. Randazza, we were talking about your
19 communications with Mr. Gibson after this issue
20 about the \$75,000 arose between you.

21 A. Uh-huh.

22 Q. Would you please turn to Exhibit 68?

23 A. Okay. I'm there.

24 Q. And take a look through the pages until
25 you can tell me if you recognize it and what's in

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1 it.

2 A. These are text messages with Jason.

3 Q. Please look at the second page of texts,
4 and the first two from you at the top of the page.

5 Do you see that?

6 A. I don't know if we're looking at the same
7 thing here. Second page?

8 Q. Second page.

9 A. Okay.

10 Q. First two at the top of the page, do you
11 see those?

12 A. Yep.

13 Q. Were you reaching out to him to try to
14 have a meeting with him?

15 A. Yes.

16 Q. Was he cooperating?

17 A. No.

18 Q. Did you continue -- that was on the 16th.
19 Did you continue to try to talk to him?

20 A. Yep.

21 Q. So look at the bottom of the same page on
22 August 18th, third from the bottom.

23 A. Uh-huh.

24 Q. I want to have a talk about the terms of
25 my departure and what we can do to preserve the

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1 friendship, if anything.

2 A. Yep.

3 Q. What did you mean by that?

4 A. I was aware that I was being -- there was
5 a virtual certainty I was being terminated, so I
6 wanted to talk to Jason, hopefully straighten
7 things out. If not, we could part ways amicably.

8 Q. So looking at the next page, Jason
9 responds and says, In the interim, I would ask
10 that you please quit assuming the worst and give
11 me the benefit of any doubt, as you are expecting
12 of me.

13 A. Yep.

14 Q. Do you see that?

15 A. I do.

16 Q. Did you take that at face value?

17 A. No.

18 Q. By this time, had you talked to anyone at
19 the company about whether or not you were going to
20 be terminated?

21 A. Yes.

22 Q. Who?

23 A. Kirk and Andrew.

24 Q. Is that Kirk Addison?

25 A. Yes.

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1 Q. And what is his position?

2 A. At the time, he was HR director.

3 Q. So what was your conversation with him?

4 A. I talked about a lot of the issues I was
5 having at the company, and that it was pretty
6 obvious that I -- the way I was being treated and
7 pretty obvious that I knew I was going to get
8 fired, and Kirk confirmed that.

9 Q. And what about -- you said Andrew. Is
10 that Andrew Rasmus?

11 A. Yes.

12 Q. The same one who was a performer and had
13 a relationship with Mr. Gibson?

14 A. Yes.

15 Q. What was the context of that
16 conversation?

17 A. Andrew told me that while he wasn't
18 included in any of the meetings, he knew that they
19 were meeting with attorneys about getting rid of
20 me.

21 Q. Now, earlier you talked about filing the
22 motion with the Federal Court to enforce the
23 judgment. But did you also seek fees on that?

24 A. We did.

25 Q. Have you reviewed the fee motion and

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1 Order that are attached as our Exhibit 92 and 93?

2 A. Yes.

3 Q. So were you successful in moving for
4 fees?

5 A. We were.

6 Q. But the Order -- did the Order come down
7 while you were still at Excelsior?

8 A. No, just a few days after.

9 Q. During this time period, how were you
10 trying to get the money that the court had
11 ordered, the 50 -- \$550,000 in the settlement the
12 court had enforced?

13 A. It was a real challenge because PayPal
14 did not want to disburse it, and Oron was, of
15 course, fighting it, threatening to appeal, saying
16 there was no settlement agreement. So I was both
17 doing so formally through enforcement proceedings.
18 In fact, even threatening to file for a writ of
19 bodily attachment against the person at PayPal who
20 didn't want to -- who didn't want to approve it.

21 Q. Did PayPal, however, eventually come
22 through and transfer money held there based on
23 that enforced settlement?

24 A. Once I threatened to file for a writ of
25 bodily attachment against their counsel, yes.

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1 Q. Were there any hiccups where they were
2 about to produce it, and then didn't?

3 A. Yeah, that happened a couple of times.
4 We were -- you know, they assured me, We're going
5 to disburse it in a few hours, and then it didn't
6 happen, and then they came up with some new reason
7 why they couldn't do it or wouldn't do it.

8 For a case that settled in six days, it
9 sure got complicated.

10 Q. Did they, in fact, eventually send money
11 from PayPal to your trust account?

12 A. They did.

13 Q. And where were you when that happened?

14 A. I'm pretty sure I was in Massachusetts.

15 Q. For what?

16 A. For my sister's wedding.

17 Q. Could you please take a look at
18 Exhibit 73 --

19 A. Okay.

20 Q. -- before you?

21 Take a look at it, and let me know when
22 you recognize what it is so I can ask some
23 questions about it.

24 A. Okay. I recognize what it is.

25 Q. So this series of e-mails is dated

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1 August 29th. Is that consistent with when you
2 were in Massachusetts?

3 A. It is.

4 Q. And you forwarded something to
5 Mr. Gibson, if we're looking at the third page?

6 Pardon me. The page that has EMC179 as the Bates
7 stamp.

8 A. Yeah. I just to be clear, on one of the
9 days that I was gone on this vacation, I went down
10 to Miami for the day, so it may have been sent
11 from Miami.

12 Q. All right.

13 A. But I don't think that's really relevant,
14 but I thought I would make sure I was clear.

15 Q. So Page EMC179.

16 A. Yes.

17 Q. About midway down the page, there is an
18 e-mail from you to Mr. Gibson saying, I'm figuring
19 all this out. But, FYI?

20 A. Uh-huh.

21 Q. So what is this you are forwarding to
22 him?

23 A. Letters from our Hong Kong counsel.

24 Q. Now, Mr. Gibson comes back and says that
25 now they are learning that you received the

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1 550,000 in your trust account?

2 A. Yes.

3 Q. Had you been concealing that from them?

4 A. No.

5 Q. How long ago had you learned it?

6 A. It was really a matter of hours. I know
7 that I got a fax from my bank when it came in. It
8 couldn't have been more than a few hours.

9 Q. What did Mr. Gibson want you to do?

10 A. He wanted me to immediately disburse it
11 to Liberty.

12 Q. Did you understand that you could do
13 that?

14 A. I couldn't do it yet.

15 Q. Why not?

16 A. Because all of the settlement terms
17 weren't fully executed, and thus I was personally
18 on the hook for whatever I disbursed plus ten
19 percent.

20 Q. If you look up to Page EMC178 --

21 A. Yeah.

22 Q. -- did you outline to Mr. Gibson the
23 things that still had to be done --

24 A. Yes.

25 Q. -- to effectuate the settlement

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1 agreement?

2 A. Yes.

3 Q. And looking up at EMC177, did he respond?

4 A. He did.

5 Q. So did he give a calculation about how he
6 thought the funds should be disbursed?

7 A. He did.

8 Q. And that's the calculation there on
9 Page 177?

10 A. It is.

11 Q. Did you notice anything about that
12 calculation in terms of what you believed you were
13 entitled to?

14 A. Yes.

15 Q. What was that?

16 A. That he was trying to make it net, that I
17 would get 25 percent of net, not gross.

18 Q. All right. Did you respond to that?

19 A. I did.

20 Q. Look at the first page of the exhibit,
21 please.

22 A. Yes.

23 Q. Did you send him your calculations?

24 A. I did.

25 Q. Now, this refers to RLG fees for Oron

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1 litigation.

2 A. Yep.

3 Q. What's RLG?

4 A. Randazza Legal Group.

5 Q. And had Randazza Legal Group done work on
6 the Oron litigation?

7 A. Yes.

8 Q. Now, was Excelsior paying full freight
9 for RLG's hourly rates?

10 A. No. One of the -- one of the deals that
11 we had was that although I had this outside firm
12 with all these other people working for it, I
13 didn't want to ever be seen by self-dealing by
14 referring outside work to my personal firm for my
15 own benefit.

16 So what I did is I calculated what the --
17 to the best of my ability, and, you know, frankly,
18 if we have a forensic accountant go through and
19 figure out if this is right, I don't know if I
20 would come out above or below.

21 But to the best of my ability, I figured
22 out what everybody cost me. For example, JAF is
23 Jason Fischer. He costs me 75 per hour. Jay
24 DeVoy costs me 60 an hour. Laura costs me 35.83
25 an hour. And Ron costs me 180.83 per hour.

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1 So rather than me make a dime of profit
2 off them, I just charged at that rate. And where
3 are you going to get a 14-year litigator for \$180
4 an hour?

5 Q. All right. Let's -- now that we're at
6 the 29th, let's shift a bit to the issue of you
7 leaving the company.

8 A. Uh-huh.

9 Q. Which the other side has characterized as
10 a resignation, and you've characterized as a
11 termination.

12 A. Yes.

13 Q. So August of 2012.

14 A. Yes.

15 Q. Is it correct that by this point, the
16 incident in the back of your car had already
17 happened?

18 A. Yes.

19 Q. And by this point, late August 2012, had
20 the -- that e-mail exchange with Mr. Gibson about
21 the \$75,000 happened?

22 A. Yes.

23 Q. Were there other things going around that
24 also made you think that you were likely to be
25 terminated?

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1 A. Well, aside from the meetings with other
2 attorneys about them wanting to fire me, and the
3 fact that Jason would not -- you know, I had a
4 client that wouldn't communicate with me except to
5 tell me to transfer the money. And it was -- you
6 know, it was just very obvious. I knew. And it
7 was confirmed to me by both Andrew and Kirk.

8 And, you know, I asked -- I also asked
9 Mr. Lowderman about it, but he told me that there
10 was absolutely no plan to terminate me, but --

11 Q. Let's take a look at Exhibit 66, please.

12 A. Yep.

13 Q. Let me know when you are there, please.

14 A. Okay. I am there.

15 Q. Look at the start of this e-mail chain
16 first.

17 A. Uh-huh.

18 Q. What is that you are doing in this -- in
19 this e-mail on August 7th, 2012?

20 A. The very top one?

21 Q. The very first one, which I guess would
22 be the bottom, we'll call it.

23 A. Oh, I'm sorry.

24 This is where I'm telling everybody in
25 the company that we just got word that our motion

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1 to enforce the settlement against Oron was
2 granted.

3 Q. Did you see that as a big deal?

4 A. Yeah, because everybody in the company
5 knew that this was a really big, hard fought case.

6 Q. And next you see an e-mail from Cameron
7 Frost?

8 A. Yes.

9 Q. Saying congratulations?

10 A. Yes.

11 Q. Did Mr. Gibson respond?

12 A. Yes.

13 Q. So let's look at the first page of this
14 exhibit.

15 A. Right.

16 Q. Was this to anyone other than you?

17 A. No, it was just to me.

18 Q. So did this e-mail help to inform your
19 understanding of what was going to happen to you,
20 based on what he said about benefits in this?

21 A. Yeah. I mean, he had told me before that
22 that -- actually, it might have been before, it
23 might have been after, but around this time, I was
24 informed that benefits for my family would be cut.

25 Q. And so he reacted to the news by saying

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1 to you that Cameron would be fired?

2 A. Yeah. And Cameron was a pretty important
3 person at the company. I mean, this is a -- this
4 is a porn company. Getting rid of the
5 photographer seems to me like a really strange
6 thing to do, given that he's probably the most --
7 I mean, at least one of the most important people
8 there.

9 Q. And he mentioned some things that were
10 going to be cut?

11 A. Yes.

12 Q. And he said he's going to do that because
13 the money from Oron doesn't make up for what has
14 been stolen from us --

15 A. Right.

16 Q. -- in the form of declining sales?

17 A. Right.

18 Q. Was that the message he had been giving
19 you recently?

20 A. Yes. I figured the -- I figure the
21 pretext for getting rid of me was going to be, We
22 just can't afford you anymore.

23 Q. And then down there at the very bottom,
24 you see where it says, There are going to be cuts
25 for everyone else on this recipient list in the

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1 very near future?

2 A. Uh-huh. And I'm on that list.

3 Q. So once you are in August 2012 and you
4 believe that you are going to be fired, what did
5 you start to do about it?

6 A. I don't understand the question.

7 Q. Sure. Did you start making any plans for
8 if you were fired?

9 A. Yes.

10 Q. Did you consider resigning?

11 A. I did.

12 Q. How far did you go on that path?

13 A. I actually wrote a resignation letter.

14 Q. Did you send it?

15 A. No.

16 Q. Why not?

17 A. I still had a hope that if I brought in a
18 big enough of a win for the company on Oron, that,
19 you know, Jason's mood would elevate, and we would
20 be able to -- and get things back on track. You
21 know, a \$550,000, plus maybe the attorney's fees
22 on it, that would have been our -- I think our
23 biggest score to date, and probably could have
24 kept -- you know, if the company was really in
25 such dire financial straits, it would have kept us

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1 going for a while. It, at least, would have paid
2 my salary for a couple years.

3 Q. Did you start moving things out of your
4 office?

5 A. I did.

6 Q. Why was that?

7 A. Because I just didn't want to have it
8 there anymore. I was afraid that at some point I
9 would be frog marched out of the place, and
10 then -- and then I'd be -- wouldn't be able to go
11 in and get my stuff. Jason was a little bit
12 vindictive that way.

13 Q. Now, you mentioned Erika Dillon before,
14 correct?

15 A. Yes.

16 Q. Was she employed by Excelsior?

17 A. She was.

18 Q. Did she work as your paralegal at
19 Excelsior?

20 A. She did.

21 Q. Did you talk to her about the possibility
22 that you would be leaving one way or another?

23 A. I did.

24 Q. Did you ask her to leave with you?

25 A. She actually brought it up, as I

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1 remember.

2 Q. What did she say?

3 A. She said that -- you know, she asked if
4 there would be a job for me at my firm.

5 Q. What did you tell her?

6 A. I told her I would certainly love to have
7 her, but I didn't think that I could afford her
8 because she would have to take -- you know, if she
9 wanted to come, I would love to have her, but she
10 would have to take a pretty large salary cut. At
11 the time, she was making 50,000 a year, and I told
12 her the best I could promise her would be 30,000 a
13 year.

14 Q. What was her response to this discussion
15 about what she wanted to do?

16 A. She didn't care. She said that she had
17 come to the company to work for me, not to --

18 MS. KRINCEK: I'm just going to object.
19 This is hearsay, and we've got Erika Dillon's
20 deposition that is being entered into evidence,
21 Arbitrator.

22 ARBITRATOR HABERFELD: Overruled.

23 BY MR. WHITE:

24 Q. Did you do anything to pressure her into
25 leaving?

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1 A. Oh, God, no.

2 Q. Did you threaten her, like things would
3 go badly for her in the industry?

4 A. No. In fact, I tried to -- you know, I
5 wanted her to come, but I was pretty clear that it
6 was going to be a huge pay cut, and, you know,
7 maybe not even any benefits to start off, but that
8 I would do my best to fix that.

9 Q. Okay.

10 A. The worst job offer I've ever seen.

11 Q. So aside from speaking with Ms. Dillon
12 about the possibility of joining you, did you take
13 any steps to secure your personal data?

14 A. Yes.

15 Q. Let's talk about the computers you used
16 when you were there. Did you have a laptop, a
17 company-issued laptop at this time?

18 A. Yeah, I had -- I had had two by this
19 time.

20 Q. The one you had at this point, what kind
21 of laptop was it?

22 A. It was a MacBook Air.

23 Q. And when you did Excelsior work on it,
24 did you store Excelsior documents long term on the
25 laptop?

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1 A. No. Everything was kept on a cloud
2 server.

3 Q. What's a cloud server?

4 A. It's a -- it's like when you look on your
5 desktop, and it looks like you have a hard drive,
6 but that hard drive is not located on your
7 computer, that hard drive is located, I don't know
8 where, but it's -- it's located at Amazon's -- on
9 this system -- I originally started doing this
10 through iCloud, which was an Apple service. But
11 then Jungle Disk is the one I switched to because
12 it was more secure, it was encrypted and faster.

13 Q. So when you had -- while working on
14 Excelsior or Liberty matters, would you store all
15 the pleadings and correspondence on your computer?

16 A. No. Everything would be stored on the
17 cloud server.

18 Q. Would you ever have something maybe
19 temporarily saved on the computer?

20 A. Yeah. While I was working on a computer,
21 while I was in that particular document, I would
22 save it to a folder called Working Files, which
23 was really just, as far as I was concerned, a
24 trash folder. Because when I was done with it, I
25 would save the final draft back to the server, and

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1 then move on to the next project.

2 Q. Now, the Jungle Drive, did you have any
3 sort of approach to making sure that all of Corbin
4 Fisher's materials would be preserved on there?

5 A. Yeah. I saved everything to it.

6 Q. At this time, when you are still employed
7 there, who had access to the Jungle Drive?

8 A. Me, Erika, and other -- any RLG lawyer
9 who was working on a Corbin Fisher project.

10 Q. Now --

11 A. And we actually had two Corbin -- drives
12 for Corbin Fisher. We had one for the Oron
13 litigation itself, and then one for all other
14 Corbin Fisher files.

15 Q. Mr. Randazza, did you have anything
16 personal on that laptop?

17 A. Yes, I did.

18 Q. What types of things did you have?

19 A. I would have like when my wife would send
20 me personal pictures, I would save them to a
21 folder there, personal documents that I might scan
22 in to deal with later, I would save there.

23 Q. Any tax documents there?

24 A. Yes.

25 Q. Did you have any concerns about those, if

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1 you left, falling into the hands of Excelsior?

2 A. I did at the end, because it was clear I
3 was being lied to about whether I was being fired,
4 and I knew that -- you know, I suspected that
5 Jason would be vindictive about that stuff, so I
6 didn't want it to fall into his hands.

7 Q. So did you, in fact, take steps to wipe
8 that laptop?

9 A. I did.

10 Q. Do you remember the exact sequence of
11 events, when exactly you did it?

12 A. I'll do my best to remember. I really
13 didn't know how to do it, so I called Nick Mosier,
14 who worked for the company, and asked him how to
15 do it. And he gave me a few instructions, which I
16 couldn't really figure out, so I -- he had me
17 install something called TeamViewer, which is a
18 piece of software that let's a remote person proxy
19 into your computer and then be able to do things
20 for you, so I had Nick do it for me.

21 Q. And the respondents have shown an expert
22 report that indicates that the first wipe started
23 on the 28th.

24 A. Uh-huh.

25 Q. Do you remember whether or not that's

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1 accurate? Do you have any independent
2 recollection?

3 A. I mean, it sounds right. I don't -- I
4 didn't like calendar when I did it.

5 Q. Is it possible you moved forward with
6 securing the private data before you ultimately
7 had the exchange in which you say you were fired?

8 A. Oh, I know for a fact. I was -- I was so
9 sure I was going to get fired that I thought I
10 should work on doing that right away.

11 Q. Would doing this have -- on this
12 computer, have eliminated any of Excelsior's data
13 that wasn't saved elsewhere?

14 A. No, it would not have. At worst, it
15 would have wiped out a former draft of something
16 that was no longer relevant.

17 Q. Now, was wiping personal items something
18 that was done at Excelsior when someone left?

19 A. Yes.

20 Q. Did Mr. Gibson ever communicate that to
21 you?

22 A. You know, there wasn't a written stated
23 policy about it, but I do remember when, like I
24 said before, Kirk started working there, it was my
25 job to be the executioner when people got fired.

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1 So I remember when I had to fire a woman by the
2 name of Micah Stoffel, when I fired her, she had
3 wiped her personal information from her -- one of
4 her devices, and I remember seeing an e-mail from
5 Jason that said that that was, you know, of
6 course, consistent with what we do.

7 Q. Would you please look at Exhibit 38?

8 A. Okay.

9 Q. Do you recognize what this is?

10 A. Yes.

11 Q. What is it?

12 A. It was an e-mail from Jason to me on or
13 about the date that I fired Micah.

14 Q. Looking at the last paragraph, do you see
15 the last paragraph on the page in the portion of
16 the e-mail from Mr. Gibson?

17 A. Yes.

18 Q. Referring to getting the phone ready,
19 tasks include deleting all of Micah's personal
20 photos, texts, and others?

21 A. Yes.

22 Q. Was that consistent with what you
23 understood the practice to be?

24 A. Yes.

25 Q. Now, sometimes in your experience, did

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1 phones not get wiped at the company?

2 A. Yes.

3 Q. Did you ever observe Mr. Gibson making
4 use of phones of former members -- former people
5 who worked at the company?

6 A. Yes.

7 Q. In what context?

8 A. I think he showed me Jon Price's phone
9 that he had kept, and he was using it to
10 essentially intercept text messages that were
11 intended to go to Jon from people who didn't know
12 that Jon no longer had the phone.

13 Q. Now you had an iPhone that the company
14 issued, correct?

15 A. Yes, I did.

16 Q. Was the fact that you had seen that, did
17 that play any role in your feeling about whether
18 or not you should turn over the iPhone?

19 A. Yes.

20 Q. Have you in this litigation offered to
21 pay for the value of the iPhone?

22 A. I did.

23 Q. And did we turn it over to the
24 examination expert, agreed upon by the parties for
25 analysis?

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1 A. We did, and I believe they still have it.

2 Q. So I'm going to turn your attention,
3 again, to August 29, 2012. And I would like you
4 to turn your attention to Exhibit 74.

5 A. Okay. I got it.

6 Q. And let's start from the last page, the
7 first e-mail.

8 A. Okay.

9 Q. Do you see this e-mail from you to Jason
10 entitled, My continued representation of the
11 company?

12 A. Yes.

13 Q. What was your intent in sending this?

14 A. To try to get Jason to have a
15 conversation with me. At the time, you know, even
16 though I've said I felt like it was inevitable
17 that I was being fired, you know, I thought there
18 was at least some chance that if he got this, he
19 might see -- he might see that maybe it's time for
20 me to talk to this guy.

21 Q. Now, your first clause there, you say,
22 Given our now openly adversarial relationship.

23 What was that referring to?

24 A. Well, we had had an exchange of e-mails
25 where I think I even accused him of trying to

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1 cheat me out of my bonus. You know, it was -- we
2 were clearly at loggerheads to an extent that we
3 had never been before.

4 Q. The next clause says, It seems
5 appropriate that I withdraw from representing
6 Liberty in any further matters.

7 A. Yes.

8 Q. What did you mean by that?

9 A. There was like one case that we had
10 talked about me filing, and I -- against
11 Gaytorrent.net, and so I didn't want to open any
12 new files if I was no longer going to be working
13 there.

14 Q. Your next sentence says, There might be a
15 way I can continue to wind down existing matters,
16 but it's going to require a call to discuss it.

17 A. Yep.

18 Q. Do you see that?

19 A. I do.

20 Q. Did you intend to convey that you were
21 dropping out of all the cases immediately?

22 A. Well, of course not. That would be a
23 very poor way to phrase it if I was.

24 Q. Did you intend this as a resignation?

25 A. I did not.

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1 Q. So what time did you -- does this show

2 you sending it?

3 A. At 3:10 p.m.

4 Q. And turning to the next one, what's the

5 time for Mr. Gibson's response?

6 A. 4:04 p.m.

7 Q. Do you recall where he was with respect

8 to where you were?

9 A. He was in Las Vegas.

10 Q. All right.

11 A. And I was on the East Coast. This is

12 printed from a different server. This is printed

13 from one that --

14 Q. Well, this one has the Respondents' Bates

15 stamp, correct?

16 A. Oh, yeah.

17 Q. EMC?

18 A. Yeah.

19 Q. And he says in here, he directs you to

20 counsel that he's hired, correct?

21 A. Uh-huh.

22 Q. Did you -- and he says your -- We

23 construe your e-mail as a resignation of your

24 employment and accept your resignation effective

25 immediately.

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1 Do you see that?

2 A. I do.

3 Q. Did you respond to that promptly?

4 A. I did.

5 Q. And the very top e-mail on the page --

6 A. Yes.

7 Q. -- what did you say?

8 A. I wrote to Wendy and Patrick saying that
9 it wasn't a resignation, as much as Mr. Gibson
10 would like it to be so he can try and evade
11 payment of my severance.

12 Q. And looking at the second paragraph,
13 there is a reference to you being represented by
14 people --

15 A. Yes.

16 Q. -- in respect to this.

17 Had you already lined up the
18 representation before you got that response from
19 Mr. Gibson?

20 A. I had not.

21 Q. How did you get it together that quickly?

22 A. Well, Allan Rubin at Jackson Lewis is a
23 good friend of mine, as is Clyde DeWitt. So I
24 called Allan, because I knew that Allan and
25 Jackson Lewis specialized in employment law, and

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1 Clyde was local, and I called in a favor with each
2 one of them.

3 Q. Did you, based on this exchange, direct
4 Erika Dillon to do anything that you had discussed
5 with her before?

6 A. I don't recall directing her to do
7 anything, although I think I probably told her
8 to -- you know, to -- if she is going to quit, she
9 might as well quit now.

10 Q. Did you continue with the process of
11 wiping your laptop as you discussed?

12 A. I'm not quite sure, but I did see on
13 their expert report that it continued to go, but
14 then one time it stopped after five percent. I
15 really can't -- I don't know.

16 Q. But you were trying, at least, to wipe
17 the laptop the way you discussed, right?

18 A. For sure, yes, I was.

19 Q. Were you hiding from Excelsior at this
20 time that you had wiped the laptop?

21 A. No.

22 Q. Did you tell anyone there?

23 A. I'm pretty sure I told the HR director,
24 Kirk.

25 Q. Would you please look at Exhibit 76?

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1 A. Yes.

2 Q. And let me know when you recognize what
3 that is.

4 A. I recognize it.

5 Q. Okay. Is that an exchange between you
6 and Kirk Addison?

7 A. It is.

8 Q. And looking on the second page, would you
9 look at the last e-mail on the second page?

10 A. Yes.

11 Q. Do you see where it says, Okay, I will
12 try to log in. Do you know my employee number?
13 It was on my computer, which has been wiped.

14 A. Yep.

15 Q. Was it your intent to convey to them that
16 it had been wiped?

17 A. Well, I wasn't trying to hide it. That's
18 the HR director. I was telling him.

19 Q. Did anyone -- did he respond to you, stop
20 wiping, or you shouldn't wipe?

21 A. No, but I think I got a -- I know
22 eventually I got a letter from Wendy telling me
23 not to do it. It was after the fact.

24 Q. Did you tell Excelsior that you were
25 going to keep the entire 550,000?

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1 A. No.

2 Q. Did you convey to them a plan for
3 conveying the parts that were not in dispute?

4 A. Yes.

5 Q. Will you please look at Exhibit 75?

6 A. I see it.

7 Q. Does this include your plan for your
8 proposal for what to do about the \$550,000?

9 A. Well, I was hoping that we could meet and
10 work it out.

11 MS. KRINCEK: Your Honor, I would object
12 to the instruction of this. It seems to me it's
13 along the vein of the settlement proposal.

14 ARBITRATOR HABERFELD: Response?

15 MR. WHITE: If so, it's by my client, so
16 I don't think Ms. Krincek has standing to object.
17 Also, it's not for the purpose of showing my
18 client's liability, which is the part of the no
19 settlement communications rule. So it would be --
20 it's simply to show that he was not denying access
21 to the money.

22 ARBITRATOR HABERFELD: What's your
23 position on that, Ms. Krincek?

24 MS. KRINCEK: Well, I don't believe the
25 rule about the admissibility of the settlement

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1 communications is similar to an attorney/client
2 privilege where it can be waived by one party or
3 the other or invoked by one party or the other. I
4 think the rule is just --

5 ARBITRATOR HABERFELD: It is or it isn't?

6 MS. KRINCEK: Yeah.

7 ARBITRATOR HABERFELD: I will go with
8 that.

9 What about the second part of what
10 Mr. White said?

11 MS. KRINCEK: The second part being the
12 reference to -- I missed the second part.

13 MR. WHITE: The second part I articulated
14 is that the purpose isn't to establish
15 Mr. Randazza's liability, which is the root of the
16 rule against admitting settlement communications,
17 the purpose is to show that contrary to the
18 narrative that he was running off with the money,
19 that he immediately offered a discussion about
20 what parts should be turned over.

21 MS. KRINCEK: Yeah. Okay. So in the
22 context -- that was in the context --

23 ARBITRATOR HABERFELD: And what made it
24 settlement talk? If somebody says, Here is the
25 way it should be, does that immediately trigger a

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1 settlement, or does that -- what's to show that
2 they were actually settlement as opposed to
3 something else?

4 Do you get my drift?

5 MS. KRINCEK: I do. I think he was
6 referring in here to some matters about ways that
7 the issues might be resolved between the two
8 parties.

9 ARBITRATOR HABERFELD: Could you direct
10 me to that language?

11 MS. KRINCEK: With respect to any
12 outstanding matters unrelated to the issue between
13 your client and myself, I'm not yet instructing --
14 he's talking about the steps he's going to take
15 with regard to other outside counsel.

16 You know, I'll withdraw my objection.

17 ARBITRATOR HABERFELD: Okay. Thank you.

18 MS. KRINCEK: I don't have a problem with
19 it.

20 BY MR. WHITE:

21 Q. Did you send that the next day to
22 Ms. Krincek?

23 A. I did.

24 Q. Had you talked to anyone
25 contemporaneously with this exchange of e-mails in

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1 which they said you resigned and you said you were
2 fired that characterize what had happened?

3 A. I'm sorry. I don't understand your
4 question.

5 Q. Yeah, it should be taken out and shot.

6 At the time that you had that exchange in
7 which they said we accept your resignation, did
8 you have any contemporaneous communications with
9 people about whether you had quit or whether you
10 had been fired?

11 A. I think I had a text message exchange
12 with Andrew.

13 Q. Is that, again, Andrew Rasmus?

14 A. It was Andrew Rasmus, yes.

15 Q. Would you take a look at Exhibit 77?

16 A. Yes.

17 Q. And I'm going to ask you to turn to the
18 page that's Bates stamped EMC39955?

19 A. Okay. I'm there.

20 Q. And look at the last text on the page.

21 A. It's official, I'm terminated, open
22 paren, or I quit, if you believe Jason's version,
23 close paren.

24 Q. Did you send that at about the time this
25 happened?

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1 A. Yes.

2 Q. Now, did you immediately after this give
3 Excelsior the access to the Jungle Drives?

4 A. No.

5 Q. And why not?

6 A. Because it was my understanding under --
7 that I was able to hold onto that if I hadn't been
8 paid all sums due to me.

9 Q. Your understanding under what authority?

10 A. Under Nevada law.

11 Q. Would that be the Nevada Rules of
12 Conduct?

13 A. Yes.

14 Q. Did you later turn them over in this
15 litigation?

16 A. I did, despite the fact that I believe I
17 had a right to continue to maintain them until
18 being paid.

19 Q. Do you believe you have all of your
20 e-mail traffic with Excelsior in spring of 2012
21 and later?

22 A. Not only do I not believe I do, I know
23 for a fact I do not.

24 Q. Was there any change in the way e-mail
25 was handled at around spring of 2012?

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1 A. Yes.

2 Q. What was the change?

3 A. I don't really know what caused it,
4 because, again, I -- there are some things I'm
5 pretty tech savvy about. This one I had no idea
6 what happened.

7 But sometime in the spring of 2012, up
8 until that point, I had used a mail program
9 like -- you know, like you use the Mac mail
10 program. It is kind of like Outlook if you don't
11 use a Macintosh to download, read, and handle
12 e-mail. I also used the mail program that is on
13 the iPhone.

14 And at some point, then, it -- somehow
15 the way the e-mail was handled changed so I could
16 only access it through the Webmail client, so I
17 would actually have to log into a Website, read it
18 on the Website, and then keep it there.

19 And that was also -- there was an app
20 that you could use on the phone that would allow
21 you to do the same thing, but you couldn't
22 actually download copies of the -- of it unless
23 you actually specifically printed it to a PDF and
24 saved it, or at least I couldn't.

25 Q. So when you left, did you have copies of

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1 all the mail that you had exchanged during that
2 time period after that new system went in place?

3 A. No. In fact, I only had a few scattered
4 e-mails that were copied to other servers.

5 Q. Let's turn back your -- the issue of you
6 leaving and the issue of Oron are intertwined.
7 Let's turn back for a moment with what was going
8 on with Oron at this time.

9 Who is Gill Sperlein?

10 A. Gill was the attorney for Titan Media,
11 the in-house counsel for Titan Media, who had his
12 own outside clients as sort of the paradigm for
13 how my representation was supposed to be.

14 Q. And did he have -- was he pursuing any
15 possible claims against Oron?

16 A. Yes. He was -- AEBN brought him in when
17 it became apparent that I was going to go my own
18 way with representing Corbin, but not doing a
19 joint case against Oron with AEBN.

20 Q. Had they filed yet by the time that you
21 got the settlement agreement enforced?

22 A. I don't recall. It was either -- I
23 don't -- I really don't know.

24 Q. Was -- was he interested in getting your
25 help of any kind in his possible suit against

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1 Oron?

2 A. Well, AEEN was. So AEEN had communicated
3 with me that, Hey, you know, can we have whatever
4 files you got here since we jointly worked on
5 getting them?

6 Q. Were there other types of assistance they
7 were asking for, as well?

8 A. Well, there was some talk about them
9 filing their case and us giving them certain
10 additional assistance, like signing a conflict
11 waiver to let our Hong Kong counsel represent both
12 parties, and in exchange -- you know, at the time,
13 there was still no -- no indication as to when we
14 were going to get this money.

15 But I think the deal that we worked on
16 with them was, Go ahead, you know, you can use our
17 Hong Kong counsel, but we want the first \$550,000
18 that you get because it will feel like we're
19 entitled to that.

20 Q. So was there also any interest in them
21 getting information from you about where Oron's
22 assets were located?

23 A. Well, those were all in the public record
24 already.

25 Q. Okay.

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1 A. I think they wanted additional
2 information from our files.

3 Q. Did this possibility of helping them
4 cause any risks or problems under the settlement
5 agreement that had been enforced by the court?

6 A. I thought it was very theoretical,
7 because we were supposed to -- under the
8 settlement agreement, we were supposed to dissuade
9 other companies from filing suit, whatever that
10 means.

11 However, at the time, AEBN, like I said,
12 was already on the path to filing suit against
13 them, frankly, before we were. However, I still
14 felt like I needed to talk about it with Jason and
15 tell him that if Oron finds out that we're doing
16 this, they may -- they may pounce on that as some
17 argument for the fact that we had violated the
18 agreement. So I did talk to him.

19 Q. Now, did -- I'm sorry.

20 A. It's okay.

21 Q. Please complete your question -- or your
22 answer.

23 A. No. I just -- I talked to Jason about
24 that at least as the hypothetical problem.

25 Q. Now, during this time you were having --

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1 you testified that you were having problems

2 meeting with Mr. Gibson, correct?

3 A. Yes.

4 Q. Did you manage to meet with him about
5 this?

6 A. I did manage to get a few minutes with
7 him on this.

8 Q. All right. So did you tell him what you
9 just said to me about the risk of what Oron might
10 do with the information that they found out?

11 A. Yeah. I mean, there was a -- you know,
12 there is really a whole decision tree here. One,
13 Oron says there is no settlement agreement. If
14 Oron says there is no settlement agreement, then
15 there is no agreement to violate. We say there is
16 a settlement agreement, thus there is an agreement
17 to violate.

18 Is giving a company that was already
19 going after them not encouraging other people to
20 sue, I don't know. That's open to stat -- to
21 contractual interpretation, but you at least
22 should know that if we do help them in any way and
23 they find out, they're most likely going to argue
24 that that is some kind of violation.

25 I said I didn't think it was a good

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1 argument, but he needed to be aware of it if he
2 wanted me to -- if he wanted to make a decision
3 about what I should do next.

4 Q. What were his instructions?

5 A. Fuck them. I mean, that's a quote.

6 Q. Is that literal?

7 A. Yes. He didn't care. He said -- you
8 know, Jason, again -- these guys, as far as he was
9 concerned, and I continue to endorse his position,
10 that we had locked up about \$2 million worth of
11 their money, and as far as we were all concerned,
12 all \$2 million was ill-gotten gains stolen not
13 just from us, but stolen from all these other
14 companies in the adult entertainment industry.

15 So essentially Oron had two million bucks
16 of stolen money and was going to get away with
17 about 75 percent of it because we had settled
18 early. So Jason also asked me, he said, Well, how
19 are they -- how would they find out was, you know,
20 his other question. And I said, Well, you know,
21 you can tell them or AEBN can tell them. He said,
22 Well, I'm not going to tell them, so go ahead and
23 do it.

24 Q. So did you take steps to start giving
25 assistance to Mr. Sperlein on behalf of AEBN?

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1 A. I did.

2 Q. Did you keep -- did you keep Mr. Gibson
3 in the loop about that issue as you did so?

4 A. I did.

5 Q. Would you please turn back again to
6 Exhibit 68?

7 And look at the last page and the last
8 couple of texts on the last page.

9 A. Okay.

10 Q. Let me know when you are there, please.

11 A. I'm there.

12 Q. There's an exchange on August 24th.

13 Do you see that?

14 A. I do.

15 Q. What's the significance of what you are
16 talking about there when you are talking about if
17 they use our Hong Kong attorneys, they will need a
18 conflict waiver?

19 A. Okay. Oh, well, see, there's -- that's
20 where there could be a potential conflict because,
21 you know, the Oron attorneys -- the Hong Kong
22 attorneys said that under their rules, they would
23 need a conflict waiver.

24 Q. And would that make it open and obvious
25 that assistance was being given?

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1 A. Yes.

2 Q. So was this the only writing in which you
3 kept him up-to-date about the analysis of this
4 issue?

5 A. No.

6 Q. Would you look at Exhibit 72, please?

7 A. Just to elaborate, this is -- this is
8 where I'm giving him additional instructions as to
9 what the possible downside is.

10 72?

11 Q. Yes, please.

12 A. Okay. I'm here.

13 Q. Take a look at it and tell me when you
14 have recognized it and I can ask questions about
15 it.

16 A. I recognize it.

17 Q. Now, is this an e-mail about this
18 subject?

19 A. It is.

20 Q. And is Mr. Gibson copied on it?

21 A. He is.

22 Q. What's the point of this mail?

23 A. To keep him up-to-date what's going on
24 and to share Randall Arthur's position, and to let
25 Gill know that we couldn't continue to assist him.

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1 Q. Did either that text exchange or this
2 e-mail, did Mr. Gibson ever write back, and, you
3 know, ask you what you were doing or demand that
4 you stop?

5 A. No. In fact -- no.

6 Q. Now did you monitor some of the pleadings
7 in the Oron litigation after you departed
8 Excelsior?

9 A. Yes. Most notably we got the attorney's
10 fees order that we had filed just prior to my
11 departure.

12 Q. Did Liberty ever attempt to get an order
13 in that case to force you to turn over the money
14 in your trust account, \$550,000?

15 A. I don't have an immediate recollection of
16 that.

17 Q. Take a look at Exhibit 94, please, if you
18 would.

19 A. Okay. Yes, I remember this now.

20 Q. So in 2013, did they make an attempt to
21 get the court to order to get the money out?

22 A. Yes.

23 Q. Did you file documents stating your
24 position about why it was appropriate to keep it
25 in your trust account?

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1 A. Yes, we did.

2 Q. Now, you've reviewed the exhibits in our
3 case. Would those be 95 and 96, your objections
4 to their motion and your reply?

5 A. Yes.

6 Q. Was there a hearing?

7 A. There was.

8 Q. If you would look at 97, please?

9 A. Yes, I see it. It appears to be the
10 transcript from that hearing.

11 Q. What did Judge Navarro ultimately do at
12 that hearing with respect to their demand that the
13 money be turned over?

14 A. I believe she denied that request. She
15 seemed very puzzled by the whole thing.

16 Q. Did you articulate to her the basis for
17 which you believe that you were entitled to
18 maintain it in the trust account --

19 A. Yes.

20 Q. -- during these proceedings?

21 A. Yes. That they were contested funds, and
22 we were entitled to be paid. And Liberty's
23 counsel, actually, at that hearing admitted that
24 we're entitled to be paid something, but didn't
25 have a position as to how much.

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1 Q. Did you, in the course of this
2 litigation, eventually transmit a certain amount
3 of the \$550,000 to Liberty?

4 A. I did.

5 Q. And was that after negotiation between
6 the two sides about what we viewed is not in
7 dispute?

8 A. Yes. However, it wasn't just in dispute
9 with me. Since there was an appeal, I think,
10 filed by Oron, and I want to say there was also an
11 arbitration filed by Oron, there were really three
12 parties claiming -- or four parties, even,
13 claiming entitlement to those funds.

14 Q. Let's discuss that. Did you learn
15 eventually that Oron filed arbitration demand
16 against Liberty after you had left?

17 A. I did.

18 Q. Have you ever been able to review it?

19 A. I do remember getting a quick look at it.

20 MR. WHITE: So please look at -- Your
21 Honor, if you would look in Volume 1 of the
22 Respondents' exhibits.

23 Mr. Randazza, if you have that, as well,
24 Exhibit 334?

25 THE WITNESS: This isn't it, is it? Oh,

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1 got it. Got it.

2 Yes, I have it.

3 BY MR. WHITE:

4 Q. All right. Please take a look at it
5 until you get to the portion that says FF Magnat
6 Limited's notice of claims and remedies, JAMS
7 Arbitration.

8 A. Uh-huh.

9 Q. On Page -- that's EMC734.

10 A. I see it.

11 Q. First of all, who is FF Magnat Limited?

12 A. That's the owners of Oron. So when I say
13 Oron, that's the -- that's who I'm talking about.

14 Q. In this pleading, is it fair to say that
15 they laid out some of their complaints about how
16 they believe that Liberty had violated the
17 settlement agreement?

18 A. Well, that's what it purports to be, yes.

19 Q. All right. So looking at Page 6 of this
20 complaint -- excuse me, Page 7.

21 A. Okay.

22 ARBITRATOR HABERFELD: EMC number,
23 please?

24 MR. WHITE: 740, Your Honor.

25 ARBITRATOR HABERFELD: Thank you.

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1 BY MR. WHITE:

2 Q. The section heading Claims, and the first
3 one says that in contravention of the agreement,
4 Liberty did not dismiss the Hong Kong action with
5 prejudice --

6 A. Uh-huh.

7 Q. -- instead it moves forward.

8 Now, once you left Liberty, did you have
9 any influence over whether or not the Hong Kong
10 action would move forward?

11 A. No. I had no authority at all to have
12 anything to do with that.

13 Q. Point 2 on the next page is about
14 assisting Datatech. Is that the Datatech that you
15 testified about before?

16 A. Yes.

17 Q. Was that the assistance as you understand
18 it that you discussed with Mr. Gibson?

19 A. Yes.

20 Q. Point 3 is that Liberty has done nothing
21 to assist Oron in convincing its payment
22 processors to unfreeze accounts.

23 Once you left Liberty, did you have any
24 ability to impact that?

25 A. No. In fact, I think it would have been

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1 improper for me to even try.

2 Q. Point 4 says that Liberty hasn't publicly
3 announced that Oron is protected by the DMCA and
4 that there was never any child porn on it.

5 A. Right.

6 Q. Did you have any ability to do that on
7 behalf of Liberty once you left?

8 A. No, I did not.

9 Q. Point 5 is about a joint letter with
10 Liberty. Did you have any ability to do that once
11 you left?

12 A. No.

13 Q. They also complain that you didn't keep
14 the document private, but included it in a public
15 filing.

16 A. Uh-huh.

17 Q. Was that part of what you felt you had to
18 do to get it enforced in the action with Judge
19 Navarro?

20 A. Yes. Actually, I even want to say -- I
21 mean, you can check up on me by looking at the
22 actual public court record here, but I'm pretty
23 sure it was Oron that included it as an exhibit,
24 not us.

25 Q. Did you later learn that Oron and Liberty

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1 had entered into a new settlement?

2 A. I got word of that, yes.

3 Q. Did you know at the time the terms?

4 A. No.

5 Q. Did you follow some of the things that
6 they were saying in the Court of Appeals in the
7 Ninth Circuit?

8 A. Yes.

9 Q. So let's take a look, please, at
10 Exhibit 99, if you would.

11 A. Okay. They are in Volume 3.

12 ARBITRATOR HABERFELD: Mr. Whitehead?

13 MR. WHITEHEAD: There you are.

14 ARBITRATOR HABERFELD: Thank you.

15 BY MR. WHITE:

16 Q. Do you recognize this appellate motion?

17 A. I do.

18 Q. Have you reviewed it?

19 A. A long time ago.

20 Q. Did Liberty begin to assert that you had
21 improperly sought fees in the District Court in
22 this and other actions?

23 A. It did.

24 Q. What was the thrust of that argument?

25 A. That I had not been honest with the court

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1 about the attorney's fees sought by seeking the
2 amount incurred rather than the amount paid,
3 essentially relying on lodestar.

4 Q. So, in other words, it's fair to say that
5 you talked about in your -- your applications for
6 fees the number of hours expended, the rates that
7 you believed were reasonable?

8 A. Yes. And we had an independent law firm
9 give us an opinion on that, as well.

10 MS. KRINCEK: Your Honor, I would object
11 to Mr. Randazza testifying about Liberty's --
12 Liberty Media's other counsel's positions taken
13 with respect to why his fee application in Oron
14 was improper.

15 He's not in a position to characterize
16 what their arguments were, and he's submitted the
17 motion practice and the pleadings where they
18 specifically identify what the problems were.

19 MR. WHITE: Your Honor, I'll move on with
20 just one or two more questions and not ask him to
21 characterize any more than what's in this
22 document.

23 ARBITRATOR HABERFELD: Objection
24 sustained.

25 ///

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1 BY MR. WHITE:

2 Q. Mr. Randazza, did you understand this
3 pleading to be saying to the Ninth Circuit that
4 even though you charge incorrectly, it didn't
5 matter, because it came out the same under the
6 lodestar method?

7 A. That is what it says here in plain
8 English.

9 Q. Did Excelsior know the method you used to
10 ask courts for attorney's fees on those occasions
11 when you were able to do so?

12 A. Yes, they did.

13 Q. And under what circumstances would they
14 find out?

15 A. Well, we made motions for attorney's fees
16 on a regular basis.

17 Q. Who would sign off -- I mean, did you
18 have to have declarations from Excelsior and
19 Liberty?

20 A. Yes.

21 Q. Who would sign the declarations?

22 A. I know that Eric Gapp signed them from
23 time to time, Mr. Dunlap, maybe Henry Leonard.
24 I'm pretty sure Henry Leonard signed one or two.

25 Q. And did you ever discuss it in writing

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1 with them?

2 A. I don't recall any specific circumstance
3 of doing so, but sitting here today, I'm pretty
4 sure I did.

5 Q. Just one moment. I will show you another
6 exhibit. There are so very many. I'll have to
7 return to that.

8 Mr. Randazza --

9 ARBITRATOR HABERFELD: Off the record.

10 (Whereupon, a recess was taken.)

11 ARBITRATOR HABERFELD: Back on the
12 record.

13 BY MR. WHITE:

14 Q. Before we broke, Mr. Randazza, I was
15 asking you whether or not you ever talked to
16 Mr. Gibson in writing about the fact -- the way
17 that you submitted attorney fee bills.

18 Do you recall that?

19 A. Yes.

20 Q. I would like you to look at Respondents'
21 Exhibit 372, and if you would look at the very
22 last one.

23 A. Okay.

24 Q. If you look at literally the last page of
25 that exhibit.

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1 A. Yes.

2 Q. And let me know when you are there,
3 please.

4 Are you ready to answer a question about
5 it?

6 A. Yes.

7 Q. Is this an e-mail between you and
8 Mr. Gibson?

9 A. Yes.

10 Q. And who is Eric Gapp, G-a-p-p, who was
11 CC'd?

12 A. He was an assistant in the legal
13 department. He was my paralegal. And Jason also
14 gave him some other authority.

15 Q. What are you explaining to Mr. Gibson in
16 this e-mail?

17 A. That we are running this through RLG
18 instead of in-house so that we can see the
19 lodestar fees.

20 Q. Is that at the bottom, This way I can
21 submit the bills to the court for the full 400 per
22 hour and not risk that?

23 A. Yes.

24 Q. What is the other benefit of doing it
25 that way?

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1 A. Well, so that some --

2 Q. Gentleman?

3 A. -- less than gentlemanly defense attorney
4 would try to pry into Liberty's internal records.

5 Q. Let's move to the second to last category
6 of our discussion.

7 A. Okay.

8 Q. And that is Liberty's claims against you.

9 A. Okay.

10 Q. Let's first talk about the claim that you
11 hid from Excelsior that you were doing business
12 through RLG as a separate entity.

13 A. Right.

14 Q. Why were you using a separate entity?

15 A. Well, first of all, it was required under
16 my contract -- oh, wait. For representing
17 Excelsior or Liberty?

18 Q. Or why were you running your own separate
19 clients through RLG?

20 A. Because that was the contractual
21 requirement, that if I'm going to have separate
22 clients, they will have to be represented through
23 a separate entity.

24 Q. Did you conceal from Mr. Gibson that RLG
25 was a going concern, something that actually had

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1 clients?

2 A. Anything but.

3 Q. Did you ever have a discussion --

4 MS. KRINCEK: I'm just going to object.

5 We haven't -- we're not -- our counterclaims

6 aren't based upon him having established Randazza

7 Legal Group, and you said for pleadings and court

8 filings. We're not making that claim.

9 MR. WHITE: Well, I'm judging in part

10 based on Mr. Gibson's deposition testimony where

11 he suggested that it was hidden from him that this

12 was really a going concern. I can find the quote

13 if you like, but I could also move on for now.

14 MS. KRINCEK: That's not part of our

15 counterclaim, so we won't be arguing that in our

16 closing brief.

17 MR. WHITE: I will move on, then. Thank

18 you.

19 ARBITRATOR HABERFELD: Will there be any

20 testimony about that as presented by you,

21 Ms. Krincek?

22 MS. KRINCEK: No. I mean, we made

23 allegation about the number of clients and amount

24 of outside work he was doing, but not related to

25 merely having established Randazza Legal Group.

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1 ARBITRATOR HABERFELD: Mr. White?

2 MR. WHITE: Then I will skip that area of
3 questioning.

4 ARBITRATOR HABERFELD: Okay.

5 BY MR. WHITE:

6 Q. When you ran Randazza Legal Group, did it
7 have a Website?

8 A. It did.

9 Q. And did that Website list on it at least
10 some of the clients, the clients in which you
11 represented them in public entities -- excuse
12 me -- in public affairs?

13 A. Yes. Any clients that I had represented,
14 that it was a matter of public record that I
15 represented them, was revealed on the Website;
16 however, I felt that even a mere representation of
17 a client was confidential until that happened.

18 Q. So, for instance, was Bang Brothers
19 listed on your Website?

20 A. Yes, it was. I want to say it was
21 probably the first one listed.

22 Q. And Kink, was that listed on your
23 Website?

24 A. Yes, it was.

25 Q. And those are two of them as to which the

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1 respondents have claimed a conflict of interest,
2 right?

3 A. Correct.

4 Q. Did you try and conceal your
5 representation of those from Excelsior?

6 A. It had to be the worse concealment job in
7 history, because it was there, and, in fact, we
8 discussed it, as well --

9 Q. Your Honor, just to flag --

10 A. -- openly.

11 Q. -- just to flag a dispute between the
12 parties, one of my exhibits is a printout from an
13 Internet archive, which is a way to print out
14 Websites as they appeared on certain past dates.

15 I did not produce it until very recently,
16 I think last week, because it didn't occur to me
17 until about then. Ms. Krincek reasonably is
18 arguing that it's late. My position is that it's
19 a resource that's equally available to everyone
20 out there, and -- but I'll submit on that.

21 ARBITRATOR HABERFELD: Prejudice?

22 MS. KRINCEK: Could you remind me of the
23 exhibit number?

24 MR. WHITE: Yes. It's 89.

25 MS. KRINCEK: So what Exhibit 89 is, and

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1 these were just produced, I think within the week
2 or two, maybe two weeks before the arbitration.
3 It appears to me that they're printouts from some
4 Website that claims it can go back and produce old
5 versions of Websites. So it's appearing to me
6 like this is tempting to show what would have
7 shown on the Randazza Legal Group Website years
8 ago.

9 ARBITRATOR HABERFELD: That's what I'm
10 hearing.

11 MS. KRINCEK: Yeah, right, years ago.
12 And the representation on here is not that they
13 are current clients, it's here's clients the firm
14 has represented. Doesn't say now, it doesn't say
15 when, it doesn't say who in the firm has
16 represented them.

17 So it's untimely, it's not probative.
18 And I've gathered at least four documents worth of
19 the -- that were submitted to the arbitrator where
20 we were trying to compel Mr. Randazza to identify
21 the outside clients he worked for, and continually
22 the position that we were getting in response is
23 they have a right to privacy under the California
24 Constitution, it's privileged, it's confidential.

25 ARBITRATOR HABERFELD: I thought we were

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1 working our way through that.

2 MS. KRINCEK: Yeah.

3 ARBITRATOR HABERFELD: How far did we get
4 in that as far as what you want to represent to
5 the arbitrator?

6 MS. KRINCEK: What we ended up doing,
7 Your Honor, you put the onus on us to come forward
8 and explain a basis for believing that there were
9 clients -- specific clients that he represented
10 that would be conflicts of interest with my
11 client.

12 So we had to come forward and identify
13 which ones we suspected he worked for and why we
14 thought it was going to be a conflict. So we only
15 actually were able to have him respond as yes or
16 no whether these people are his clients and
17 potential conflicts of interest, a very limited
18 scope of --

19 ARBITRATOR HABERFELD: Let me hear from
20 Mr. White. Probative value of what these Websites
21 would show?

22 MR. WHITE: Your Honor, you have
23 Mr. Randazza's testimony that a few of these
24 clients, just the ones that were public, appeared
25 on the site. The --